In the Privy Council.

No. 45 of 1906.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE REVEREND IWAN ZACKLYNSKI, PAVLO PASEMKO and PETRO MELNYK, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as Individuals, as Priest and Members of the said Congregation, suing on behalf of themselves and all other Members and Adherents of the said Congregation (amended by leave granted March 11th, 1902) . *(Plaintiffs) Appellants,*

AND

MICHAILO POLUSHIE, IWAN PYLYPIW and MICHAILO MELNYK . . *(Defendants) Respondents.*

CASE OF THE APPELLANTS.
CASE OF THE RESPONDENTS.
RECORD OF PROCEEDINGS.

Wm William Shepherd

HARRISON & POWELL,
5 Raymond Buildings, Gray's Inn, W.C.,
for Appellants.

BLAKE & REDDEN,
17, Victoria Street, Westminster, S.W.,
for Respondents.

Importance - Value of depts evidence - p 163-4 @ l 1 / p 164
admission p 27 l 23-26
Mrs Melnyk p 130 l 48-9 p 131 l 1-2

~~£ 40~~ 35 XX/100

33 witnesses - depts called 10 founders Horton 3-27-69
pltffs " 3 - - 1- on rebuttal
- 1- sp. who came after initial meetings
1 P.M. who only

Ex D-E - p 98 l 9-12

Casemko p 50 l 39 ~~27~~ — p 49 l 40-41
P Melnyk p 39 l 6-8
Joan Melnyk p ~~32-40~~ l 40
Spaczynski p 31 l 33

Intentions - - that is done which is intended to be done
Booles p 58 - p 109-110 Mrs p 136 l 27-35
Lakusta Halkow vs Melnyks.
Petro Melnyk p 41 l 20. — p 149 l 39-40
Pasemko 149 l 30-32

Conflict of Ev.
Ev. for pltffs.
1 - once a mistake always a mistake.
2. 3 founders out of 33 witnesses
nothing of initial meetings.
" " alex. Fr. "
" " getting land p 28 l 22
" " permit

Ev for depts - 10 founders -
Initial meetings not denied - & see Ex 5 & 6
Alex'ffs " " " & see admission & petition
Starting to build church p 28-29 l 46 & R & B. visit
alex. 8 l 32. 47
Bishop Legal's visit p 41 l 22, p 150
stay with your own religion - p 41 l last your own priest will
soon be here p 24
Synod would not accept SO permit from Legal p 28
" used by all p 32 l 29. 30
Permit -
Relinquishment by R & B. p 28 l 9 - p 165
Lands used by R & B p 11 l 7-11 - p 19 l 22-24 p 46 l 22-23

Ref 3 109-110

Memo

1 Conflict of ~~argument~~ evidence. ~~Point of View~~

a. Pltffs case – as Trustees – Conflict but pltffs abandoned

Then an assumption that once a Trustee always a Trustee. all pltffs witness called to support proof that pltffs were Trustees in Galicia & were so here also, & that Bishop Legal exercised his Ecclesiastical authority over them accordingly.

B. Defts case ~~secretly~~ Trustees in Galicia under compulsion Even there ~~secretly~~ orthodox

Chechanek p 109
Melnyk p 136
Phelan p 46
Korchewsky p 54 – l 18

When they came here they determined to throw off allegiance to Pope. & did so – To prove this defts showed: by 10 witnesses founders as Point of View

1 – Initial Meetings to get service &c. & the only undue offered was by defts. Pltffs might have questioned Peter Melnyk who was there but did not. Besides defts put in documentary Evidence Ex 5 & 6

2. Following up this determination – the coming of the orth missionaries – Bishop to inform –
The communication of Rome – proved by subsequent coming of R.C. Bishop & by Petition See p 23 l 16 p 31 l 26
Similarity of service Phelan p 47 l 28
Melnyk p 41 l 18.
The defts as to building a church & subsequent applic for land to Govt – admitted by Sp: p 28 l 22 – 27
PM. p 150 l 5–6

3. The visit & solicitous offers of the RC Bishop on condition they wd stick to their own religion & refusal to take any thing from him. Sp p 27 l 43 p 48
PM p 41 l 24 p 150
Subs from all sources. p 131 l 25.

4 Permit p 41 l 35. p 150 l 7

5 Recovery of Land from RC Bishop
PM. p 150 p 41 l 24
Sp. p 29 l 43 p 28 l 1 & l 17
Ex 1 p 165 see p 38 l 40

(6). Rule in Galicia as to holding of land
p 11 l 7 – 11 } of Sp 28.
p 46 l 22
p 19 l 22 – 24
as to Providing Priests
p 15 l 29

(1) List of Documents 21 3

7 As to Kuching ah Dauegurú
Sp p 25 - l 24 p 27 l 26 p 31.
Cf Rylyppus p 103

Decl^n of Zaeh p 148

8 Course of discussion adm^n p 29 l 45
Zaeh p 148 l 37
with which depts agree
Cf.
Semantowich p 150 - l 6 -
Pen. 152 l 29
Sp " l 37-39
P. Pas. 153 l 6-7
J. Pri.

Peculiar Circumstance
p 40 l 35 Cf p 88 l 42 89 l 1
p 82 l 41
p 114 l 11

Refusal to swear
p 148 & 40
p 37 l 10-12

It was not Kurfoot a question of conflict of Evidence but as Mr Justice Edmiston points out p 247 of a proper appreciation of the evidence.
And the question is - can this Conv^n which, as is above shewn, so strongly repudiated the jurisdiction & control of the R.C. Ch. be heirates - as pltffs claim.
The Trial Judge - can scarcely be held to say that the Conv^n did not repudiate the jurisdiction & control of the R.C. Ch. in ~~the matter of disciplined marriages~~.
his finding can not so be interpreted -
Can his conclusions be justified on the evidence
see p 3 of appellants Case & p 15. l 26

Can it be doubted that if the appellants' win - a complete reversal in the character & image of the Conv^n will result
see Pen. p 39 l 34
Zoldee p 11 l 1-6
Phelan p 46 l 27 & l 33-34

Conflict as to attitude of Conv^n Ritual &c
p 113 l 46 p 114 l 1-11
Sp p 26 l 18 p 30 l 13
see map

Real Issue - = Supremacy of Pope.

Petro Melnyk p. 41 l 28 - p 149 l 39 - 40
Paulo Pasemko p 149 l 30 - 32
No difference in service
Philas p 47 l 28
adm^n p 154

Reply

Rev Kordinsky

You are mistaken - This was before they explained

Kor. p 52 -
W Pullishy p 113 l 39
M Pullishy p 98 - l 30

Fmax p 82 l 31 - 40
Melnyk 89 l - 20

Workmen re Borys p 43 see lines 33 - 4
Kor p 60 l 32
Alex p 94 l 20

Catholic
p 14 l 1
p 93 l 4

Is there any convention or ~~binding~~ authority binding in Canada whereby the Rb Bishop would be compelled to give even as much of autonomy to Uniates as they enjoy in Galicia

Conflict as to how they got their land

Legal p 16 l 28
His Lordship claimed to have got the land see p 150
see p 24 l 20
p 27 - l 16 Dmytrow only had 3 services
l 43 Bishop promised - never supplied
p 20 l 27 cf.
p 41 l 22
p 27 l 43 cf p 131

Dist "6"

Wellesley p 113 l 40 cf p 40 l 35 cf p 114 l 11
p 82 l 40 p 88 l 40 - Pm figures up

Sp. p 26. reduces list by 53
p 30 l 13
p 23 l 6 – 10 l 27 – 30 - Schematic - p 42 l 8
p 23 l 16 - 500 or 600 people at that meeting
p 31 l 24-26 - about 60 names on the paper

Map - see p 87 - ch in question
wrong
Rebirth p 30 l 13

In the Privy Council.

No. 43 of 1906.

On Appeal from the Supreme Court of Canada.

BETWEEN—The Reverend IWAN ZACKLYNSKI, PAVLO PASEMKO, and PETRO MELNYK Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as Individuals as Priest and Members of the said Congregation, suing on behalf of themselves and all other Members and Adherents of said Congregation (Plaintiffs) - - APPELLANTS

AND

MICHAILO POLUSHIE, IWAN PYLYPIW and MICHAILO MELNYK (Defendants) - - RESPONDENTS

AND

Reverend IWAN KORCHINSKI - - - DEFENDANT.

CASE OF THE APPELLANTS.

1. This is an Appeal by special leave from the Judgment of the Supreme Court of Canada, dated the 20th February, 1906, reversing the Judgment of the Supreme Court of the North West Territories, en banc, dated the 18th of January, 1905, which affirmed the Judgment of the trial Judge, Scott J., dated the 25th of March, 1904. Rec. p. 249 Rec. p. 183 Rec. p. 177

2. The Judgment of the trial Judge was in favour of the Appellants. The Supreme Court of the North West Territories was composed of four Judges,—Sifton C.J. (who alone dissented from the rest of the Court), Rec. p. 180 Wetmore J., Prendergast J., and Newlands J., the two latter concurring with Rec. p. 181 Wetmore J., in dismissing the present Respondents' Appeal with costs. The Supreme Court of Canada was composed of five Judges, two of Rec. p. 232 whom, Taschereau C.J. and Girouard J., gave dissenting Judgments in favour Rec. p. 233 of the present Appellants, the Judgment of the Court being that of the Rec. p. 234 remaining three, Davies, Idington and McLennan JJ. Six Judges (including Rec. p. 241 the trial Judge) have, it thus appears, given judicial opinions in favour of the Rec. p. 247

APPELLANTS' CASE.

present Appellants, four only in favour of the present Respondents; the Judgment of the Supreme Court of Canada now appealed against being in favour of the present Respondents by a majority of only one.

Rec. p. 3, l. 14
Rec. p. 162
Rec. p. 32, l. 19 and 20.
Rec. p. 38, l. 16
Rec. p. 17, l. 26

3. The subject matter of the action is Legal Subdivision One (1), Section twenty-seven (27), Township Fifty-six (56), Range nineteen (19), West of the Fourth Meridian, in the Province of Alberta, containing forty (40) acres. The locality in which this land is situate is known and referred to in the proceedings indifferently as "Limestone Lake," "Edna," "Star," and "Beaver Creek." On the land in question is the church and cemetery. The system of land titles obtaining in Alberta (now a Province and until lately a part of the North West Territories) is the "Torren's System," the Act relating to titles in force at the time in question in this Action being "The Land Titles Act, 1894," 5758 Vic. (1894) c. 28 Dominion.

Rec. p. 162

4. The Certificate of Title to the land in question is dated 6th July, 1899; it is in favour of "Mikel Pulischy, John Pylypiw and Mikel Melnyk" (names intended to designate the three Respondents), in trust for the purposes of the Congregation of the Greek Catholic Church at Limestone Lake. The various names by which, throughout the evidence, the locality designated in the Certificate of Title is referred to, namely,—"Limestone Lake," "Edna," "Beaver Creek" and "Star," the last being most frequently used, is uniformly adopted in this case.

5. The question in issue is whether the beneficiaries of this trust are the Appellants and those of the same class, or the Respondents and those of the same class.

6. All the adherents of each of the parties came originally to the locality in question from the Province of Galicia, Austria. The contention of the Appellants is that both the Appellants and Respondents and all the persons whom they respectively represent were in Galicia, Greek Catholics; that the Appellants and their adherents have always remained Greek Catholics; but that the Respondents and their adherents, comparatively few in number, shortly before the commencement of this action, ceased to be Greek Catholics by becoming members of the Russian Orthodox Church.

Rec. p. 5, l. 45

7. The contention of the Respondents is, as stated in the Statement of Defence that "the Russian Orthodox Church" and "the Greek Catholic Church" are one and the same Church. Question is thus raised not only of identity of creed but of equivalence of name. It will be observed that no claim is made on behalf of the Respondents that there is any mistake in the express designation of the beneficiaries of the trust nor any claim made for reflection of the instrument declaring the trust.

Rec. p. 10
Rec. p. 9

8. In Austria-Hungary the Roman Catholic religion is established. In the Province of Galicia there are, besides Catholics of Latin rite, who form the majority, a large number of Catholics of the Greek rite, and of the Armenian rite.

9. The Catholics of Latin rite are specifically of the Roman rite, and popularly and colloquially the term "Roman Catholic" (having reference to the distinction of rites) is applied almost exclusively to Latin Catholics. They are by nationality or descent chiefly Poles and Germans. Rec. p. 9

10. The Catholics of Greek rite are commonly called "Greek Catholics." Their liturgy is a translation from the Greek into the old Slavonic. Rec. pp. 9-11 Rec. p. 10

By nationality or descent Greek Catholics are "Little" or "Red Russians" or equivalently "Ruthenians" and are so called. By reason of the fact that these Greek Catholics in Galicia were prior to the Pontificate of Pope Clement the VIII. in 1595 members of the "Orthodox Church" but were then united to the See of Rome, they are often colloquially called "Uniates." Rec. p. 14, p. 54, p. 95 Rec. p. 13 and p. 14 Rec. p. 20 Rec. p. 52, p. 55, p. 10

There is no Greek Catholic Bishop on the American continent. Rec. p. 10, l. 43 Rec. p. 15, l. 40 Rec. p. 15, l. 14 Rec. p. 46, l. 24

In countries where there is no Greek Catholic Bishop, Greek Catholic Priests and lay people are subject to the Roman Catholic Bishop of the Latin rite having jurisdiction there, and it is the duty of the Bishop to supply congregations of Greek Catholics as soon as possible with a priest of their own rite, meanwhile providing for them a priest of the Latin rite. Rec. p. 15, ll. 28-32

11. The Armenian Catholics use a liturgy in the Armenian language. Rec. p. 13, l. 46

12. These three classes of Catholics all recognise the Pope of Rome as their Supreme Head, and are therefore all equally and absolutely Roman Catholics in the more commonly intended sense of that expression. In view, however, of the racial linguistic and especially the ritual differences existing in Galicia, the Pope restricted the jurisdiction of the Latin Archbishop of Lemberg, the Capital of Galicia, to Catholics of Latin rite and established there two other Arch Episcopal Sees with Episcopal Sees of like rite subject to them, one having jurisdiction over the Greek and the other over the Armenian Catholics only. A predecessor of the present Greek Catholic Archbishop of Lemberg was a Cardinal of the Roman Church. Rec. p. 9, l. 40 Rec. p. 18, l. 19 Rec. pp. 11, 12, 13 Rec. p. 9, ll. 30-40 Rec. p. 15, ll. 28 32 Rec. p. 10, l. 15

13. By reason of this separation of these three bodies of Catholics under three distinct hierarchies (though each is equally dependent upon the Pope) the terms "Roman Catholic Church" ("Roman" having reference to rite) "Greek Catholic Church" and "Armenian Catholic Church" are constantly used colloquially and without impropriety when the intention is to localize; e.g. "the Greek Church of Galicia"; "the Greek Catholic Church at Limestone Lake." Rec. p. 45 Rec. p. 10

14. The Greek Catholics of Galicia besides being described as above stated are also referred to as—

The Ruthenian Church, Rec. p. 13, l. 34
The United Ruthenian Church, Rec. p. 15, l. 13
The Uniate Greek Church, Rec. p. 15, l. 12
The United Greek Ruthenian Church, Rec. p. 15, l. 13
The Uniate Church, Rec. p. 45, l. 31
Catholics of the Greek rite.

Rec. p. 10, l. 40 Uniates,
Rec. p. 15, l. 14 Catholics of the Ruthenian rite,
Rec. p. 10, l. 5 Roman Catholics of the Greek rite.

15. Though there are differences not only in matters of ritual, but also, in matters of discipline, the creed of Greek Catholics is, with absolutely no difference, that of the Roman Catholic Church.

Rec. p. 58, l. 36 16. The Russian Orthodox Church is governed by the Holy Synod of Russia.

Rec p. 10 It is prohibited in Galicia; the only Church of the kind in Galicia being
Rec. p. 45, l. 42 one in Lemberg for the use of the Russian Consul and his suite.

17. The creed of the Russian Orthodox Church differs in important articles from that of the Roman Catholic Church of which, as has already been stated, Greek Catholics equally with Latin Catholics are members.

The chief points of difference in creed are :—

The Roman Catholic Church holds and the Russian Orthodox Church denies the following dogmas :—

Rec. p. 11 1. The infallibility and supremacy of the Pope.
Rec. p. 154 2. The Immaculate Conception of the Virgin Mary.
3. Purgatory.
4. The procession of the Holy Ghost from the Father and from the Son.

Rec. p. 14, l. 28 In the liturgy used by the Greek Catholics there is a prayer for "the Holy Catholic Arch-Priest, the Pope of Rome." The corresponding prayer in
Rec. p. 14, l. 32 the liturgy of the Russian Orthodox Church is for "The most Holy Synod."

18. There are other names by which the Russian Orthodox Church is known.

19. The Defendant, Father Korchinsky, says the official name is :—

Rec. p. 60, l. 9 "The Orthodox Russo Greek Catholic Church,"
Rec. p. 60, l. 17 "The Orthodox Greko-Russian Church."

About two years after this action was commenced, the Church was incorporated by Ordinance of the North West Territories, Chapter 43 of 1903, by the name of

"The Russo-Greek Catholic Orthodox Church."

The only names, however, to which he could point in any of his books were as follows :—

Rec, p. 14 ; p. 60, l. 17-19 ; p. 72, l. 3 "The Orthodox Greko-Russian Church,"
"The Orthodox Church."
Rec. p. 60, l. 38 (The Orthodox Catholic Faith)
"The Holy Orthodox Church,"
Rec. p. 60, l. 40 "The Orthodox Russo-Greek Church,"
Rec. p. 72, l. 5 "The Holy Eastern Church."
Rec. p. 72, l. 15

In giving his Evidence the varying names he used were :—

"Orthodox Greek Catholic Church,"	Rec. p. 51, l. 18
"Orthodox Russo-Greek Catholic Church,"	Rec. p. 51, l. 19
"Eastern Catholic," "Eastern Orthodox Catholic" or just "Orthodox,"	Rec. p. 57, l. 1
"The Russian Church,"	Rec. pp. 58-60
"The Greek Catholic Church," "Sometimes,"	Rec. p. 61, l. 25
"The Holy Orthodox Russo-Greek Church,"	Rec. p. 62, l. 13
"The Greek Orthodox Church,"	Rec. pp. 71-75
"The Russian Orthodox Church,"	Rec. p. 155, l. 30
"The Russian Greek Catholic Orthodox Church,"	Rec. p. 157, l. 45
"The Holy Orthodox Russo-Greek Catholic Church."	Rec. p. 158, l. 3

He speaks of the Greek Catholic Archbishop of Lemberg as "the Greek Catholic or Uniate Archbishop of Lemberg." Rec. p. 57, l. 31
He virtually refused to produce his Certificate of Ordination, though knowing it was considered important to ascertain by what name his Church was thereon designated. Rec. p. 59, ll. 30-40
Father Alexandroff took a similar position. Rec. p. 95, l. 24
Father Korchinski says that if he were told a man were a Catholic, he would understand him to be a Roman Catholic. Rec. p. 61, l. 20

20. Father Alexandroff, a witness for the Respondents, gives the names of his Church as follows :—

"The Greek Catholic Orthodox Church,"	Rec. p. 91, l. 31
"The Greek Catholic Church,"	Rec. p. 93, l. 36
"The Russian Greek Catholic Orthodox Church,"	Rec. p. 93, l. 38
"The Russian Orthodox Church."	Rec. p. 95, l. 33

Before the trouble arose, he called it in a letter to the agent of Dominion Lands (Exhibit M). Rec. p. 93, l. 39

"The Russian Orthodox Church" Rec. p. 163, l. 21

and his visiting card designates it

"The Greek Russian Orthodox Church." Rec. p. 96, l. 24

21. Father Skibinsky, another witness for the Respondents, gives the names of his Church as follows :—

"The Greek Church,"	Rec. p. 102, l. 3
"The Eastern Orthodox Russian Greek Catholic Church,"	l. 5
"The Orthodox Greek Catholic Church,"	l. 6
"The Greek Catholic Church,"	l. 6
"The Russian Orthodox Church."	l. 7

22. The history of the Congregation of the Greek Catholic Church at Star is now briefly given.

23. Practically all the Ruthenians about Star came from Galicia, and coming from Galicia must necessarily have been Greek Catholics and not members of the Russian Orthodox Church, which as has been stated, is prohibited in Galicia. Rec. p. 40, l. 12; Rec. p. 43, l. 14; Rec. p. 44, l. 29; Rec. p. 45 ll. 14, 30; Rec. p. 48; p. 20, l. 10.

The Ruthenians farther Eastward in the neighbourhood of Wostok P.O. Rec. p. 10

Rec. p. 100, l. 32
Rec. p. 27, l. 34
Rec. p. 45
Rec. p. 103, l. 31
Rec. p. 10, l. 29

came mostly from Bukowina, another Province of Austria where there are many members of the Greek Orthodox Church as well as Greek Catholics. About six miles north easterly of the Church in question is Wostok P.O. Nearly all these Bukowinians were members of the Orthodox Church in Bukowina, and have always continued so.

Rec. p. 85, l. 40
Rec. p. 85, l. 42
Rec. p. 101, p. 86, l. 1.
Rec. p. 112
Rec. p. 115
Rec. p. 125, l. 20
Rec. p. 125
Rec. p. 127
Rec. p. 123, ll. 17-19

24. In the winter of 1896-7 before any Priest had come to the settlement, the then settlers at large, comprising the country surrounding both Star and Wostok, " first took steps to start a Church " and for that purpose had " a few gatherings." The three Respondents and a few others used to meet together occasionally for that purpose. There were three meetings, two at Sawka's and one at Halkow's. At the first meeting there were only four persons,—Halkow Sawka, Lakusta and Nymyrski.

Rec. p. 110, l. 40
Rec. p. 123, l. 30
Rec. p. 166, l. 20

The result of this meeting was that Sawka wrote a letter to which a reply came dated San Francisco, Jan. 8/20, 1897 from the " Bishop of Alutzk and Alaska."

Rec. p. 123, l. 35
Rec. p. 122, l. 40
Rec. p. 125, l. 20
Rec. p. 124, l. 40
Rec. p. 125, l. 6

This reply from the Bishop was read at the second gathering held at Sawka's and the third held at Halkow's. These two gatherings appear to have been larger than the first. A second letter came from the Bishop, but was not read at any of these meetings ; but merely shown about the locality surrounding Wostok and Star Post Offices.

Rec. p. 100, l. 40
Rec. p. 112, l. 4

It is stated by Respondents' witnesses, that it was decided at the earlier of these meetings to build a " Greek Catholic Orthodox" Church and to get a " Greek Catholic Orthodox " Priest ; but that at the last meeting it was decided that there were enough people to get a grant of land for a church.

Rec. p. 144, l. 25

Though it may have been the intention of some of those present at these gatherings to cease to be Greek Catholics and become members of the Russian Orthodox Church, it appears it was not the intention of all ; assuming the truthfulness of the accounts given by the Respondents' witnesses of these meetings, it appears that some at least had no intention of making a change, and that no such opinion was clearly expressed. One of these witnesses says :—

" I did not gather from what was said at that time (the first meeting) that they wanted a different Church from the one they attended in Galicia."

On the other hand the four present at the first gathering abjured their allegiance to the Pope and became members of the Russian Orthodox Church on the arrival of Fathers Kamneff and Alexandroff, just about to be referred to, and never afterwards had anything to do with the Star Congregation.

Rec. p. 20, l. 16
Rec. p. 22, l. 7
Rec. p. 79, l. 29
Rec. p. 86, l. 13
Rec. p. 97, l. 36
Rec. p. 20, ll. 15-22
Rec. pp. 20-22, 81-86
Rec. p. 20, ll. 20-30
Rec. p. 90, l. 2
Rec. p. 110, l. 10

25. In April, 1897, the Star settlement was visited by Father Dmytrow, a Catholic priest of the Greek rite. He officiated at Mass, which was sung in the schoolhouse. There was a considerable congregation. All the Respondents were present. The service was in the Greek rite and recognised as the same as used in Galicia.

He and the congregation talked over the question of building a church.

On this occasion the Priest remained only a week or ten days.

Entries of the collections made and of other matters relating to the congregation were made from time to time upon a card, which, having become worn, was replaced by a book (which is hereafter referred to as the Church Record) into which all previous entries were transcribed. Rec. p. 20. l. 36 Rec. p. 21, l. 3

A translation of the first page of this Church Record begins as follows :—

"In the year 1897.—Note for the first collection for the Church Greek Catholic Roman in Beaver Creek to-day 6th April, we have collected on the cemetery 5—." Rec. p. 22, l. 5

26. Having visited the settlement Father Dmytrow had an interview in Edmonton with Bishop Legal, the coadjutor Roman Catholic Bishop of St. Albert, who learned from him that he had visited the settlement, the name of that place where he had previously been stationed. Bishop Legal, besides finding Father Dmytrow's name in a Catholic Directory, wrote to his former Bishop and from him assured himself that he was truly a Priest of a Greek rite and as will appear Father Dmytrow eventually returned to the Star settlement with the Bishop's consent and under an arrangement that the Bishop would visit the settlement on a named day. Rec. p. 16, l. 45

27. In the month of May (probably) 1897, the land in question was selected as the site for the church. Rec. pp. 101-110

28. In June, about two months after Father Dmytrow's first visit and before his return, Father Kamneff, a Priest, and Father Alexandroff, then a Deacon of the Russo-Greek Orthodox Church, visited the neighbourhood making their headquarters at the house of a man named Nymyrski near Wostok P.O. which is distant easterly from Star P.O. about six miles. It was the first of three annual visits of Father Alexandroff to Wostok. Rec. p. 23, l. 8. Rec. p. 91, l. 39 Rec. p. 97. l. 40 Rec. p. 101, l. 17 Rec. p. 92, l. 7

They held services and meetings at various places, but they "and some of the people" finally decided to obtain land for the site of a Russo-Greek Orthodox Church at Wostok. They did this, but took no steps towards securing land at Star. The application for the land for the church at Wostok made by Fathers Kamneff and Alexandroff was made in the name of the Russian Orthodox Church. Rec. p. 92, l. 46 Rec. p. 87, l. 42 Rec. p. 163, l. 20 Rec. p. 93, l. 39

It appears that a large number of the Ruthenians about Star attended a service and a meeting held by these priests at Wostok.

It was a fact accepted by Fathers Kamneff and Alexandroff that many of those present did not belong to the Russo-Greek Orthodox Church but were "Uniates." With regard to them it was made clear that it would be necessary in order that they should become Orthodox that they renounce their allegiance to Rome. Fathers Kamneff and Alexandroff made a list at the time of "the names, surnames and families of newly.joined members, and by whom they were united." The names of none of the Appellants or Respondents appear in this list; though the Respondent, Michailo Melnyk, states that he renounced, confessed and received communion at the hands of Father Kamneff, but as will be seen, afterwards continued a member of the Star congregation. Rec. p. 93, l. 5 Rec. p. 95, l. 47 Rec. p. 96, ll. 1-5 Rec. p. 130, l. 10

Spaczinski and Petro Melnyk are accused by the Respondents of favouring the
Rec. p. 152, ll. 12, 22 acceptance of the ministration of Fathers Kamneff and Alexandroff, but they both deny it.

At the time of the visit of Fathers Kamneff and Alexandroff, Halkow,
Rec. p. 24, l. 10 Sawka, Nymyrski and Lakusta, who were prominent in the gatherings held before the arrival of Father Dmytrow, became members of the Russian Orthodox Church.

It appears that though some others of the Galicians of the Star settlement
Rec. p. 31, l. 20 were at first disposed to accept the services of Fathers Kamneff and Alexandroff,
Rec. p. 36
Rec. p. 42 they soon regretted their proposed change.

It is to be remarked that in the church record no notice is made of the fact of this or any subsequent visit of Father Alexandroff; and also, that
Rec. p. 96, ll. 12, 13 Father Alexandroff at the time secured land for the Church at Wostok, but made no attempt to do the same for a Church at Star.

29. Although it is stated that about a week or ten days after Father Alexandroff had been at Star some of the people took steps to get land for the Church, and that a large meeting of the whole congregation was held and all joined in the selection of the land; it is to be remembered as already stated that the question had been discussed previously with Father Dmytrow.

Rec. p. 15, l. 40
Rec. p. 18, l. 32 30. In July or August, 1897, Bishop Legal, Roman Catholic Bishop and Coadjutor to the Bishop at St. Albert of the Latin rite and of French nationality, visited the Star settlement, being aware that two clergymen of the Russian Orthodox Church had visited the settlement.

This was the first of at least four visits, the Bishop was accompanied by
Rec. p. 15, l. 44 Father Norman, a Priest of the Latin rite; the Bishop said Mass in his own
Rec. p. 16, l. 10 rite, and spoke to the congregation both before and after Mass. The Mass
Rec. p. 16, l. 1 was said, and the meeting was held in the Limestone School House. He told them he was the Coadjutor of the diocese, that he wished to do all he could for them; that he would try and procure them a Priest of their own rite, as soon as he could.

He saw no dissatisfaction with the way in which he said Mass. He
Rec. p. 17, l. 18 stated the fact that a number of themselves had requested him to procure
Rec. p. 16, l. 39 from the Dominion Government the land in question, describing it as the land
Rec. p. 16, l. 29 " which had been selected by them for a church and on which some burials had been made." They appeared to be satisfied with what the Bishop said.

31. In August or September, 1897, previous to Father Dmytrow's return to the settlement, Bishop Legal, in consequence no doubt of the information
Rec. p. 86, l. 47 gained from Father Dmytrow, and from his then recent visit to Star with Father Norman, made application to the Dominion Lands Agent, at Edmonton, for the land in question. The reason why it is submitted that this application was probably made in August or September is that Bishop Legal stated on
Rec. p. 17, ll. 9, 10 his subsequent visit to the Star settlement on September the 14th that he had
Rec. p. 38

already taken steps to secure the land. Correspondence with the Head Office of the land department, at Ottawa, was no doubt necessary, and the Bishop paid the entry fees for the land on January 26th, 1898. Rec. p. 88, l. 17

The application was made in the name of " The Corporation of the Roman Catholic Bishop of St. Albert." Rec. p. 87, l. 40 Rec. p. 79, l. 16

32. In September 1897 Father Dmytrow returned to the settlement as arranged with Bishop Legal. He remained about a month. Immediately upon his arrival he consecrated a portion of the land in question as a cemetery and told the people to put up a cross on it and to fence it. He also told the congregation to collect money and go to Edmonton and make an entry for the land in the Dominion Land Office. He appointed a committee for the purpose. The Respondents Polushie and Melnyk were members of the committee. The Respondent Pylypiw as well as they took part in the work of the committee. Rec. p. 74, l. 45 Rec. p. 24, l. 12 Rec. p. 17, l. 15 Rec. p. 79, l. 26 Rec. p. 20, l. 30 Rec. p. 20, l. 30 Rec. p. 21, l. 36

" The Church Record " already referred to contains the following entry :—

" The Priest Nestor Dmytrow consecrated." Rec. p. 22, l. 7

This evidently refers to his consecration of the cemetery. It is also clear that from the evidence it was on this occasion and not on the occasion of his earlier visit that the consecration of the cemetery took place. Rec. p. 106, l. 15

During this visit and after the consecration of the cemetery, the people of the settlement began to haul logs for the building of the church and by the time he left the walls of the church were up. Rec. p. 80, l. 30 Rec. p, 101, l. 39 Rec. p. 24, l. 32

33. On September 14th, 1897, the Bishop as arranged with Father Dmytrow went to the settlement. Father Dmytrow said Mass in the Greek rite, the Bishop being present occupying a place at one side of the altar and at the close of the service giving the Pastoral Benediction " dressed as a Priest." There were 60 or 70 present. Through the interpretation of Father Dmytrow the Bishop spoke to the congregation on the subject of building a church and told them he had already taken steps to secure the land. There was no suggestion of dissatisfaction. Rec. p. 17, l. 3 Rec. p. 86, l. 41 Rec. p. 17, l. 5 Rec. p. 90, l. 6 Rec. p. 88, l. 46

34. Later, in the same year, after the departure of Father Dmytrow, who remained about a month, the Bishop again visited the settlement. He said Mass in the Latin rite, in the house of the Defendant Polushie. The weather being stormy only about 10 were present. After Mass the Bishop spoke about business matters connected with the church,—about building a church and about writing to Lemberg for a Priest. There were no signs of dissatisfaction. Rec. p. 17, l. 15 Rec. p. 24, l. 8

35. Apparently about the middle of November, 1897, some members of the congregation applied to the agent of Dominion Lands, Edmonton, for a permit to cut logs for a " Church to be built on the S. E. 27-56-19 ; " the printed form of requisition (exhibit 9) was sent out by the agent, it would appear to Fedor Melnyk. It was signed on the 29th November, 1897, by the Respondents Pollushie and Melnyk and Fedor Melynk, and was received back at the agent's office the 7th of December, 1897. Rec. p. 169 Rec. p. 170 Rec. p. 38, l. 21

Rec. p. 88
Rec. p. 170
Rec. p. 153, l. 30
Rec. p. 88, ll. 1-10
Rec. p. 112, l. 40
Rec. p. 153, l. 25

The printed form of requisition contained the following remarks :—"This timber is required and will be used in the erection of a church building for the Mission of the Church and for no other purpose." Under this was written by the agent in blue pencilling the words : "State whether Catholic or Greek Orthodox." When the requisition was returned to the office of the agent the blank had been filled in with the words "Greek Orthodox." These words were inserted by an English-speaking man, who followed instructions of the witness, Wasyl Polushie, who could read English in print, but not in writing, acting as interpreter for the signatories.

It is to be noted that neither "Catholic" nor "Greek Orthodox" was the designation commonly used, either for a "Greek Catholic Church" or a "Russian Orthodox Church"; this may have confused them into supposing they were restricted to one or other of these expressions; this is the view taken by the trial Judge.

Rec. pp. 175, 176
Rec. p. 175, l. 45
Rec. p. 176, ll. 1-10

They were Catholic, but they were also distinctively and jealously Greek. It is quite plain also throughout the evidence of the Galician witnesses that they explicitly claimed to be orthodox, used adjectively, and that they did not distinguish between this sense of the word and its sense as an epithet forming part of a proper name.

It may be too that these four persons had the deliberate intention of indicating the Russian Orthodox Church. In any case the requisition was subsequently altered (the Appellants submit corrected) by a clerk in the office of the Dominion Lands Agent (presumably with proper authority) by his writing across the face of the requisition the words "Greek Catholic Church." It appears by the evidence, and it is in any case reasonable to suppose that the congregation knew of the permit being got. It is on the other hand reasonable to suppose that they did not know anything of the manner in which the requisition was filled in.

Rec. p. 88, l. 13
Rec. p. 169
Rec. p. 41, l. 35

It is also to be noted that the land in question had already been selected by the congregation at large, and had undoubtedly been already applied for, for the benefit of the Greek Catholics by Bishop Legal.

Rec. p. 881, l. 8

36. Christmas, 1897, Appellants' witness, Spaczinski, precentor and priest's assistant, drove about the settlement in a party of ten, singing and making collections for the Church. This fact is recorded in the Church record with a list of donors. Spaczinski held services from the time Father Dmytrow left (October, 1897,) till the arrival of Father Tymkiewicz (April, 1898,) 1898.

Rec. p. 22, l. 29
ec. p. 41
Rec. p. 28, l. 37
Rec. p. 87, l. 1
Rec, p. 138, l. 17

37. 1898. About Holy week (April) Father Paul Tymkiewicz arrived. He came as a result of Bishop Legal writing to the Propaganda in Rome to secure a priest of the Greek rite, and on his arrival presented his testimonials to the Bishop at Limestone Lake. The Bishop almost immediately left for Europe. Father Tymkiewicz remained until the 20th of August of this year.

Rec. p. 17, ll. 20-24
Rec. p. 22, l. 16
Rec. p. 22, l. 22

His arrival "1898, 6th day, 4th month," and his departure, 20th August, are both recorded in the "Church Record." It is also recorded therein that Father Tymkiewicz "permitted Nicolai Spaczinski to hold matins, and

Rec. p. 22, l. 16
Rec. p. 22, l. 25

for that purpose the faithful will bring their offerings for the House of God"; and a list of Sundays and holidays and individual contributions follow.

38. May 25th or thereabouts, 1898, during the incumbency of Father Tymkiewicz and upon his advice that the land should not be "in the name of the French Bishop" and in view of the fear of a number of the congregation that an attempt might be made to "pull them to the Latin Church" an assignment of the right to the Crown Patent for the land in question was obtained from the Corporation of the Roman Catholic Bishop of St. Albert (Bishop Grandin to whom Bishop Legal was coadjutor executing the assignment) to the Respondents as trustees. Rec. p. 37, l. 4 Rec. p. 106, l. 37 Rec. p. 88, l. 38 Rec. p. 165

The Respondents were chosen by a few of the members of the congregation to act as the trustees for that purpose. Rec. p. 25, l. 6

All the members of the congregation did not think there was any necessity for a change in the title. The reason for the Priest and some of the congregation desiring to have the land in the name of trustees for the congregation rather than in the name of the Latin Bishop appears, as found by the trial Judge, to be thus :— Rec. p. 39, l. 34

"In Galicia their lands are held in the name of their own Archbishop and their objection to the Roman Catholic Bishop holding theirs here was probably founded upon an apprehension that he would thus be in a position to dictate terms to them, which they would not otherwise be compelled to submit to. The fact that Father Dmytrow (Tymkiewicz) himself a Uniate Priest, sided with them in their efforts to procure the title in their own names points to the conclusion that it was not a change of religion or creed that they had in view." Rec. p. 176, ll. 24-30 Rec. p. 176, ll. 24-30

The Respondent Pylypiw says, "We had no difficulty in getting the title changed." Rec. p. 108, l. 38

39. From August 20th, 1898, the date of the departure of Father Tymkiewicz for a period of about two years till the arrival of Father Zacklynski (July 1900) Spaczinski "held prayers and singing every Sunday and holiday" under the permission given him by Father Tymkiewicz at the time of his departure. While the congregation was without a Priest after Father Tymkiewicz left some members of the congregation were endeavouring to procure a Priest from Galicia. Rec. p. 25, l. 14 Rec. p. 22, l. 24 Rec. p. 113, l. 18

"None of our people went to Father Alexandroff's services on his second 1898 visit to Wostok." Rec. p. 90, l. 43

40. 1899. After the title to the land had been placed in the name of the trustees, Bishop Legal, having returned from Europe, again visited the settlement in company with Father Elceski, a Polish Priest of the Latin rite, he visited a number of the congregations and was cordially received by all. Rec. p. 17, l. 30 Rec. p. 17, l. 34

41. May, 1899, or subsequently, the witness Pasemko subscribed towards the completion of the church on the statement of the Respondents that they were "Greek Catholics under the Pope of Rome." Rec. p. 49, l. 29

Rec. p. 32, l. 40
Rec. p. 154
Rec. p. 25, l. 30
Rec. p. 154
Rec. p. 95, l. 3
Rec. p. 74, l. 6
Rec. p. 74, l. 14

42. April 1st, 1900, a written invitation to the Plaintiff Father Zacklynski (Exhibit E. a translation of Exhibit D.) was written out, read and signed and left with the Respondent Melnyk. It is signed by all the Respondents. It contains the expressions, " We are all Uniates," " Among the Bukowinians we can find about 40 families of Uniates."

Rec. p. 31, l. 35

All the Respondents assisted in collecting the money for his expenses.

Rec. p. 17, l. 38

43. 1900. About July Father Zacklynski came to the Catholic Mission at Edmonton.

Rec. p. 17, l. 32

Bishop Legal instructed Father Leduc, his Vicar-General to give him jurisdiction over the parish at Star for one month, when he was to come to Edmonton to have his faculties renewed. He went to Star, and his arrival is noted in the " Church Record." He returned to Edmonton as arranged, and the Bishop renewed his faculties as Priest in charge of the Star Congregation until the expected arrival of the Apostolic Delegate, the Pope's representative in Canada..

Rec. p. 22, l. 41

Rec. p. 25, l. 34

He consecrated the church on his arrival. He continued to hold services in the church until about the 1st of February, 1901 ; Spaczinski continuing to

Rec. p. 25, l. 36

be precentor and Priest's assistant under him. Dissensions began in December, 1899, between Father Zacklynski and some members of the congregation over

Rec. p. 25, l. 47

money matters.

Rec. p. 51, l. 34

44. 1901. January 22nd a meeting of a few members of the congregation including the respondents Polushie and Melnyk, was held at which the Defendant Father Korchinski was also present. He called them Uniates and told them they must renounce their Roman Catholic doctrines. He states that after his explanation they said that they did not accept the authority of the Pope and that their belief was the same as his. He said " So that they

Rec. p. 56, l. 4

were as I understood independents." " They were all sort of independents."

Rec. p. 63, l. 34

He said, however, that two (out of eight) present at the meeting refused to accept him as their Priest.

Rec. p. 35, l. 36

45. February 10th, 1901, a meeting, which the Appellants admit was irregular, was held. At this meeting, at which about 120 were present and

Rec. p. 34, l. 10
Rec. p. 26, l. 17
Rec. p. 27, l. 7
Rec. pp. 26, 27

which was adjourned till the 12th, 43 or 44 being then present, the Appellants were elected to be trustees instead of the Respondents. The Respondents then locked up the Church. Since these troubles began a number, comparatively small out of a congregation of about 300, have ceased to be Greek Catholics and have become members of the Orthodox Church.

Rec. pp. 90, 91, l. 1 ; pp. 51-53 ; p. 52, l. 21 ; pp. 100-108 ; p. 100, l. 11 ; p. 108, l. 28 ; p. 157, p. 51

46. It was to Father Korchinski in February, 1901, that these three Respondents abjured the authority of the Pope and became members of the Russian Orthodox Church.

Rec. p. 69, l. 26
Rec. p. 34, l. 32

47. 1901. Easter Sunday about 200 people with Father Zacklynski and about 50 or 60 with Father Korchinski met at the church. The police prevented either party from entering.

48. The witnesses for the Respondents all use the expression "Greek Catholic Orthodox Church," but at the same time say it was the same church as they belonged to in Galicia. Rec. p. 79, l. 28

Wasyl Feniak (witness for Respondents) says it was called in Galicia "The Greek Catholic Church," but he knew it was Orthodox because the word occurs in the service. Rec. p. 80, l. 2 Rec. p. 80, l. 5

Fedor Melnyk "I know the head of my church was the Archbishop of Lemberg." Rec. p. 90, l. 34

Michael Polushie (Respondent); "That was the religion I practiced in Galicia." Rec. p. 99, l. 1

Iwan Pylypiw, (witness for Respondent), "I fully believed him (Father Dmytrow) to be a Priest of the same Church I belonged to in Galicia," Rec. p. 106, l. 20

Wasyl Polushie, (witness for Respondent) "I did not gather from what was said at that time that they (? wanted) a different Church from that one they attended in Galicia." Rec. p. 114, l. 25

Iwan Sachman, (witness for Respondents) "I thought that the Church we were getting was the same Church that I belonged to in Galicia." Rec. p. 111, l. 5

Iwan Lakusta, witness for Respondents, says that the Church he was brought up in in Galicia was called "Greek Catholic"; that he joined the Russian Orthodox Church at Wostok at the time of Father Alexandoff's first visit and has ever since remained a member of that Church. Rec. p. 120, l. 14 Rec. p. 120, l. 42

Iwan Halkow, (witness for Respondents) became a member of Father Alexandroff's Church on his first visit, and had no subsequent connection with the Star Congregation. Rec. p. 126, l. 32

Mike Melnyk (Respondent) says that the Church he belonged to was called "Greek Catholic" or "Uniate." Some of the Galicians who attended the services or meetings of Fathers Kamneff and Alexandroff may have been misled by their statement that they belonged to the Greek Catholic Church. Rec. p. 137, ll. 2, 7 Rec. p. 92, l. 32

49. The Appellants submit that the documentary evidence is entirely in their favor. It consists of,

1. The "Church Record" already referred to containing the words "Church Greek Catholic Roman" and the record of the doings of the Congregation under the undoubtedly Uniate Priests Fathers Dmytrow, Tymkiewicz and Zacklynski.

2. The "Requisition for permit to cut logs" as corrected presumptively lawfully by a Dominion Government official so as to refer to the "Greek Catholic Church."

3. The certificate of title designating the "Greek Catholic Church."

4. The requisition to Father Zacklynski in which the Respondents, as well as the Appellants describe themselves as "Uniates."

50. It is submitted that the judgment of Davies, Idington and McLennan J.J. are wrong.

1. Because they are based upon the initial and fundamental error that the sole question necessary to determine is, whether or not the congregations are united with, and subject to the jurisdiction of, the Roman Catholic Church.

The Respondents became members of the Russian Orthodox Church in February 1901. The date at which the trusts were fixed in favor of "the Congregation of the Greek Catholic Church at Limestone Lake" was on the 25th of May, 1898 or thereabouts, that being the date of the assignment from the Roman Catholic Bishop to the Respondents as trustees.

The entire defence of the Respondents is the identity of the two Churches. If this question is answered in the affirmative, the Respondents are entitled to succeed. If on the other hand it is answered as the Appellants submit it must be in the negative, then the Appellants submit they are entitled to succeed because on that finding the Respondents and those of the same class are excluded from the congregation while the Appellants remain in fact actual members thereof and are entitled in a class action against third parties to represent all the members of the congregation even though it should appear that the members of the congregation, are not in all respects unanimous among themselves.

2. Because there is no ambiguity in the designation of the beneficiaries of the trust.

3. Because in considering the voluminous evidence they have not fully appreciated the fact that there are two separate and distinct congregations, namely :—

(1) One at Wostok, composed for the most part of persons who were always admittedly members of the Russian Orthodox Church together with a comparatively few others who, being originally members of the Star congregation, were formally admitted into the Russian Orthodox Church ; and

(2) One at Star, composed of persons who never were members of the Russian Orthodox Church, and from which a comparatively small number, after abortive attempts to carry the whole congregation with them, seceded and were formally received into the Russian Orthodox Church at Wostok.

51. Mr. Justice McLennan, it is submitted, falls into a further serious error when, referring to the letter of the Dominion Land Agent, he says, " It is not disputed that these words (Greek Catholic little Russian denomination) correctly describe the Greek Orthodox Church." On the contrary the Appellants contend that this letter is a strong evidence in their favor inasmuch as " Little Russian," being equivalent to " Ruthenian," the description " Greek Catholic Ruthenian " clearly designates the Appellants and their adherents, and as clearly excludes members of the Russian Orthodox Church. See the various designations *ante.*

52. And the learned Judge draws from the agent's letter an inference which, it is submitted, was never intended. That letter (Exhibit 1) the Appellants submit, may be paraphrased as follows :—

" The members of the Greek Ruthenian Catholic Church at Star say it was a mistake that this land was put in the name of the Corporation of the Roman Catholic of St. Albert; that, they say, would place it 'absolutely' under the control of the authorities of the Roman Catholic Church; they did not want this, but want 'the entire control in their own hands'; with this in view, the congregation have appointed trustees to hold the land under the General Territorial Ordinance respecting titles to lands for religious purposes, and Bishop Grandin has made an assignment to them so that this plan can be carried out, 'if this assignment is insufficient I will procure another from the Bishop.' It is submitted that this letter correctly interpreted supports the Appellants contention.

53. The Appellants submit that the Judgment of the Supreme Court of Canada should be reversed, and a Judgment directed to be entered restoring the Judgment of the trial Judge in favour of the Appellants for the following

REASONS.

(1) Because the documentary evidence and the findings of the trial Judge upon all material questions of fact are in the Appellants' favour, these findings were made upon the evidence in large part contradictory and given under such conditions as specially to indicate the importance of the trial Judges appreciation of the evidence and these findings have been confirmed by the Provincial Court of Appeal.

(2) Because the evidence shows that all the parties concerned on both sides were on their arrival in Alberta " Greek Catholics " or " Uniates," that the great majority have always remained of that religion; that the religion of the " Russian Orthodox Church " is a different religion; that even the Respondents and their comparatively small following did not renounce their religion as Greek Catholics and become " Orthodox " till long after the trusts were fixed in favour of the congregation as a whole.

(3) Because though in the early history of the settlement four or five of the leading inhabitants appear to have determined to become members of the Russian Orthodox Church and to induce the rest to follow them; not all were ready to do so; that they themselves formally became " Orthodox " and ceased to be connected with the congregation in question before the land in question was selected or the cemetery forming part of it was consecrated or the land acquired or the church erected, all of which was done by inhabitants of the settlement who continued to be Greek Catholics and under Greek Catholic Priests.

(4) Because the trustees for the purpose of getting out logs and subsequently for holding the property in question accepted that position as trustees for all the inhabitants of Star at a time when they all were actually, or at all events professedly, Greek Catholics and whatever the private views or intentions of the trustees may have been they were bound to exercise their trusts in favour of the then beneficiaries, namely, those who were then Greek Catholics and such of them, no matter to how small a number they might by defections or otherwise be reduced, who continued to hold the same faith.

(5) Because the terms of the trust declared in the certificate of title, namely, "in trust for the purposes of the congregation of the Greek Catholic Church at Limestone Lake," clearly and distinctly and not ambiguously describes the Appellants and their adherents; because it as clearly and distinctly and without ambiguity does not describe members of the Russian Orthodox Church; because the only case which it was possible for the Respondents to set up was that the description of the beneficiaries was incorrect and that rectification should be made; because they have at no stage put this aspect upon the case and because had they done so the whole burden of proof would have laid upon them.

(6) Because the fact and the circumstances surrounding it, that the representative of the "French Bishop" of the Latin rite acceded to the request of members of the congregation to transfer the land so that it would stand, not in his name, but in the name of the trustees for the congregation of the Greek Catholic Church at Limestone Lake, so far from being a circumstance in favor of the Respondents, is a strong circumstance in favour of the Appellants, showing as it does, that the question involved was one merely of title and not of faith or change of beneficiaries, and that both the Bishop and his representatives on one hand, and the Uniate Priest and the trustees on the other so understood it.

(7) Because even going so far as to accept the statement of Father Korchinski to the effect that he found the congregation to be "Independent" Greek Catholics, they clearly were not members of the Russian Orthodox Church; because there was nothing to prevent the entire congregation from declaring themselves *en masse* at any time independent of the Pope of Rome and still holding the

property in question; because such an act, however, would not entitle the Respondents to impose upon them the faith or the form of government or a Priest of the Russian Orthodox Church, all of which the Respondents have attempted to do.

(8) Because all that is necessary for the Appellants to establish in order to succeed is to rebut, or rather to show that the Respondents have failed to establish the position which they have taken up in this case, namely, that the beneficiaries of the trust at the time of the creation thereof were in all respects full members of the Russian Orthodox Church, professing the faith, submitting to the form of government and discipline and ready to accept the ministration of a Priest of that Church; and that not only have the Appellants rebutted that position, but the Respondents have failed to give sufficient evidence, if uncontradicted to establish it.

N. D. BECK.

F. R. LATCHFORD.

In the Privy Council.

No. 43 of 1906.

On Appeal from the Supreme Court of Canada.

BETWEEN

THE REVEREND IWAN ZACKLYNSKI and Others - - - APPELLANTS

AND

MICHAILO POLUSHIE, and Others - - - - RESPONDENTS.

Case of the Appellants.

HARRISON & POWELL,
5 Raymond Buildings,
Gray's Inn,
Solicitors for Appellants.

CARTWRIGHT & VINTER, Printers, 51, Bedford Row.

In the Privy Council.

No. 45 of 1906.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE REVEREND IWAN ZACKLYNSKI, PAVLO PASEMKO and PETRO MELNYK, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as Individuals, as Priest and Members of the said Congregation suing on behalf of themselves and all other members and adherents of the said Congregation (amended by leave granted March 11th, 1902) . (*Plaintiffs*) *Appellants*,

AND

MICHAILO POLUSHIE, IWAN PYLYPIW and MICHAILO MELNYK . . (*Defendants*) *Respondents*.

CASE FOR RESPONDENTS.

1. This is an Appeal from a judgment of the Supreme Court of Canada dated the 20th day of February 1906 in favour of the Respondents, reversing the judgment of the Supreme Court of the North West Territories en banc dated the 18th day of January 1905, which affirmed the judgment of the Trial Judge, the Hon. Mr. Justice Scott dated the 25th day of March 1904 in favour of the Appellants. Record, p. 249. p. 183, ll. 1-10. p. 177, l. 30 *et seq.*

2. The subject matter of the action is 40 acres of land and the Church erected thereon. The land is Legal sub-division 1 of Section 27 in Township 56 in Range 19 West of the Fourth Meridian Alberta, and the district is variously called Star, Edna or Limestone Lake. p. 180, l. 10. p. 162, l. 22.

3. The parties to the action are known as "Little Russians." They came to Canada from Galicia, Austria, and began to settle near Star, Alberta, some fifty miles from Edmonton, in 1892, taking the free homesteads offered by the p. 199, l. 5

RESPONDENTS' CASE.

Record, p. 29, l. 26. p. 47, l. 21. p. 47, l. 30. p. 176, l. 19.

Dominion Government. They are illiterate, few being able to read or write, but they are zealously attached to the religious observances, rites and ceremonies of the Greek Church of their forefathers.

p. 162, l. 22.

4. The land in question was given by the Dominion Government as a free grant, and the Certificate of Title dated 6th July 1899 shows the land to be vested in the Respondents " in trust for the purposes of the congregation of the Greek Catholic Church at Limestone Lake." Prior to the said grant two of the

pp. 169-170.

Respondents Michailo Polushie, Michailo Melnyk and a friend Fedor Melnyk all acting on behalf of their fellow settlers made a requisition dated November 29th 1897 to the Dominion Government Land Agent at Edmonton for permission to

p. 170, l. 1. p. 172, l. 47.

cut logs upon Crown lands, stating in their requisition, that the " timber is required and will be used in the erection of a Church building for the Mission of the Greek Orthodox Church, and for no other purpose." The requisition was

p. 98, l. 8.

granted, the logs were cut and carted and the Church was built by the voluntary labour and contributions of the Respondents and other settlers.

p. 2, l. 34. p. 40, l. 43 *et seq.*

5. Although at the time of the commencement of this action the Appellants claimed to have been appointed the Trustees of the Church in succession to the Respondents such claim was expressly abandoned by their counsel at the trial

p. 181, l. 17.

and the only question involved in this appeal is in substance whether the Respondents are entitled as Trustees of the Church and land to hold the same, as they contend, for the purposes of a Greek Orthodox Church or of a Church independent of the authority or control of the Roman Catholic Church and hierarchy or whether, as the Appellants contend, the Church and land are appropriated to the purposes of a Church united with and subject to the jurisdiction of the Pope and the authorities of the Roman Catholic Church in Alberta.

p. 171, l. 7. p. 199, l. 17.

6. The Church to which the Appellants and Respondents and most of the other settlers at Star belonged while in Galicia is variously designated as the Uniate, United Greek Catholic or United Greek Ruthenian and also, but as the

p. 13, l. 18. p. 47, l. 24. p. 200, ll. 1-33. p. 235, l. 11.

Respondents contend incorrectly, the Greek Catholic Church. Upon the conquest of the country by the Poles in 1595 the Greek Orthodox Church there was constrained to acknowledge the supremacy of the Pope but was allowed to retain its ritual in the Slavonic language and certain other privileges. The Appellants contend that the Congregation of the Church in dispute and its property are subject to the jurisdiction and control of the Roman Catholic Bishop of the Diocese (St. Albert) within which the members of the Congregation live.

p. 47, l. 8. p. 55, l. 10, to p. 56, l. 6. p. 80, l. 5. p. 89, l. 35. p. 94, l. 41. p. 99, l. 1. p. 109, l. 36. p. 111, l. 26. p. 92, l. 14. p. 116, l. 1. p. 237, l. 1.

7. The Respondents contend that while in Galicia, so far as they and their priests and co-religionists acknowledged the authority of the Pope they were constrained so to do by the law in force in Galicia, which entirely proscribes the Greek Orthodox Church, but that they always described their Church as the Russian Church, and often used Russian books and made pilgrimages to Churches in Russia, and that on finding themselves at liberty to do so, the original founders of the Church at Star (among whom were the Respondents) intended to throw off their subjection to the Pope.

Record,

8. The circumstances attending the foundation of the Church in question in this action were as follows:— p. 171, l. 45. p. 77, ll. 1-20.

In the winter of 1896–7 the Respondents and other Galician settlers took steps to hold religious services. p. 97, l. 29. p. 100, l. 37. p. 122, l. 32.

Of their own accord before any priest had come to the Settlement they determined to build a Greek Orthodox Church. p. 86, l. 35. p. 101, l. 15 & l. 29.

A written application was made on their behalf to the Greek or Russian Orthodox Bishop of North America at San Francisco for a priest. This letter is not in evidence but its purport appears from the replies received. p. 115, l. 17 p. 123, ll. 1-30. p. 172, l. 1.

9. In his Lordship's letter of January 8/20, 1897, he says (paragraph II): "Replying to your letter we are thankful to God that though you are in a foreign "country you remember that you are Russians and have the faith (given) by "God. I would fain include you all in this blessed faith, from which Popes and "Jesuits seek to separate you by force and falsehood." And a further letter of February 5th 1897, the Bishop says (paragraph II): "Replying to yours I have "much satisfaction in your return to your grandfathers' religion 'pravoslavny' "(i.e. Russian Orthodox). God will bless your good intention." p. 166, l. 20. p. 167, l. 20. "Progenitors"

10. These replies were read and approved at meetings attended by the Respondents and the Galicians generally of the two adjoining settlements of Wostock and Star. The question of building a Greek Orthodox Church was discussed. Two Churches were eventually built, one admittedly Greek Orthodox at Wostock, six miles from Star, and the other, the Church in question, in order to suit the convenience of the Star congregation, at Star. p. 115, l. 22. p. 116, l. 18. p. 117, l. 38. p. 123, l. 27. p. 124, l. 41. p. 125, l. 27.

11. The Greek Orthodox Bishop sent Father Kamneff, a Greek Catholic Orthodox Priest and Father Alexandroff then a Greek Catholic Orthodox Missionary to visit the Settlement in June 1897. They were well received and held services at which all the Galicians were present, except those who were absent from the Settlement or ill. Spaczinski, one of the Appellants' witnesses was present and acted as precentor. All present renounced the Pope, and a large number were enrolled as Members of the Greek Orthodox Church. p. 91, l. 30 *et seq.* p. 116, l. 36. p. 117, ll. 1-21. p. 126, l. 5.

12. The Congregation enquired what steps they should take to secure a Church and the services of a Priest. Fathers Kamneff and Alexandroff informed them that they should apply to the Government for a free grant of land and a free permit to cut logs for the church building proposed to be erected. p. 85, l. 41. p. 101, ll. 16-32.

13. Steps were forthwith taken by the Respondents and others to secure the logs and the land. In or about June 1897 an application for the land now in question was made to the Dominion Government through the local Member of Parliament. p. 150, l. 7. p. 28, ll. 22-28. p. 78, ll. 7-16. p. 80, ll. 42-47. p. 81, ll. 1-2. p. 101, ll. 31-34. p. 132, ll. 22-24.

Record, p. 17, l. 5. p. 41, l. 24. p. 102, l. 31. p. 150, ll. 1-6. p. 27, ll. 43-45. p. 41, ll. 22-41.

14. In or about the month of September 1897 the Roman Coadjutor Bishop of the Diocese of St. Albert, in which the said land and Church are situate, visited the Settlement and complained of the intention of the Galician settlers to build a Greek Orthodox Church at Star. The Bishop said " What is the matter with you, you don't stay with your own religion ? " meaning thereby the Uniate branch of the Roman Catholic Church. He offered to provide a Church free of cost and to send a priest provided only that the Galician Settlers would furnish the logs for the building of the Church. This offer was not accepted.

p. 88, l. 16. p. 87, ll. 7-15. p. 103, ll. 1-5. p. 149, ll. 26-28.

15. In the Spring of 1898, the Congregation discovered that the Roman Catholic Bishop of St. Albert at Edmonton had applied on the 26th of January 1898 for and obtained a title in his own name to the said land, without the authority or knowledge of the Congregation or any members thereof. The Congregation held a meeting, at which the Respondents were appointed Trustees and they and other members of the Congregation made three several visits to the residence of the said Bishop of St. Albert at Edmonton to demand that he should give up the land to the Trustees. They refused to permit the Bishop to retain their land and threatened to commence legal proceedings. Subsequently the Bishop relinquished all claim to the land, and on the 25th May 1898, the Agent of the Dominion Lands wrote to the Secretary of the Department of the Interior, Ottawa, in reference to the matter. This letter is in part as follows :—

p. 165, ll. 30-40. p. 166, ll. 1-4.

> " It appears to have been an error asking for a patent in his Lordship's name. This land is not intended to go to the Catholic Church, but to the members of the Greek Catholic Little Russian denomination who are settled in this vicinity.
>
> " The Trustees for these people are Mikel Polischy, John Pilipivisky, and Mikel Melnyk.
>
> " They were very deeply concerned over the fact it was proposed to hand this land over absolutely to the Roman Catholic Church ; they insist on having the entire control in their own hands and, as it is highly desirable to meet their wishes in this connection, I should be glad (if the relinquishment which I herewith enclose is inadequate) if you will be so good as to have an instrument prepared to meet the case."

p. 162, ll. 22-26.

Accordingly on the 6th of July 1899, a Certificate of Title was issued to the Respondents as above mentioned.

16. The Congregation completed the erection of the Church unaided in the year 1899, and thereafter continued to manage their own affairs without any interference whatever by or attempt to control on the part of the Roman Catholic Bishop.

p. 27, l. 15. p. 16, l. 41. p. 100, l. 22.

17. The Appellants appear to rely upon visits made to the congregation by certain priests prior to the building of the Church. A Father Dymytrow paid two short visits to the Congregation, one in April and one in September 1897. On the first occasion he came without the knowledge or authority of the Roman Catholic Bishop of St. Albert (to whom if a Uniate priest he should have reported). It was during his second visit that the Roman Catholic Bishop visited the Settlement at Star and appealed to the Galician settlers to stay with their own religion. Father Dymytrow however appears to have advised the

Record,

Congregation against committing themselves in any way to the Roman Catholic Bishop. Similarly in 1898, Father Tymkiewicz spent some four months in the Settlement. He advised the Galician Settlers strongly to accept nothing whatever from the Roman Catholic Bishop. There is evidence that one if not both these priests declared that they were not subject to the Roman Catholic Bishop, and there is no reason to suppose that the original congregation had any doubt on this point or would otherwise have accepted their ministrations. p. 28, ll. 1-6. p. 78. ll. 21-36. p. 81, l. 16. p. 87, l. 3. p. 91, l. 23. p. 99, l. 7. p. 111, l. 11. p. 239. l. 20.

18. In or about the month of April 1900, the Congregation of the Church at Limestone Lake (acting in conjunction with the congregation of the Greek Orthodox Church of Wostock) invited the Appellant Father Zacklynski to the Settlement. In the letter of invitation to Father Zacklynski from members of the congregation, the passage occurs "We are all Uniates near together on "Ranges 20, 19, 18, 17 and 16 in Townships 57, 56, 55, 54 and 53 and are moving "towards the South. There are over 300 families of us." The person however by whom this letter was prepared was not called as a witness and there is a great body of evidence to show that many of those who signed or affixed their marks to the letter were not aware that it contained this passage and that the members of the congregation generally by whatever name they might be called repudiated subjection to the Pope. p. 103, l. 27. p. 104, ll. 1-40. p. 133, ll. 38-47. p. 134, ll. 1-6. p. 154, l. 32. p. 246, l. 12.

19. Father Zacklynski admits that he told the congregation at the opening service that he had nothing to do with the Roman Catholic Bishop. The Congregation continued to accept his ministrations until he proposed to borrow $300 from the Roman Catholic Bishop with which to finish the Priest's residence, and in consequence of this and other matters a quarrel arose between Father Zacklynski and the Trustees and Congregation. His fidelity to the Greek Orthodox Church was suspected, and the quarrel resulted eventually in the Respondents as Trustees locking the Church against Father Zacklynski. Father Zacklynski states in his evidence that the Provisors appointed by him on the 18th December 1900 refused to take an oath he demanded of them, and that some of them replied, "No, no, that is for the French Bishop, do not swear." p. 148, l. 32. p. 78, ll. 41-46. p. 79, ll. 1-6. p. 88, ll. 34-43. p. 99, ll. 29-31. p. 90, l. 39. p. 148, ll. 32-40. p. 89, l. 14.

20. On the 27th January 1901, Father Korchinsky, appointed Priest of the Greek Orthodox Church in the adjoining Settlement of Wostock in 1900, was invited to become the Priest of the Congregation at Star by the Respondents the Trustees and other members of the Congregation, and he continued to act as such until the dispute arose as to the title to the Church immediately prior to the commencement of the action. Petro Melnyk one of the Plaintiffs was present, and made no objection to the invitation of Father Korchinsky. p. 89, ll. 15-18.

21. On or about the 14th February 1901, the Appellant Zacklynski who had given up his charge and left the Settlement, returned and endeavoured to remove the Respondents from their office as Trustees and to procure the appointment of the Appellants instead, and the present action was subsequently brought.

Record, p.178, ll. 4-7. 22. Scott J. the Trial Judge, declared the lands and Church in question to be the property " of that branch of the Greek Church which is united with " the Roman Catholic Church and which may properly be designated as The " United Greek Catholic Church and that they are not the property of the " Russian Orthodox Church."

p. 183, l. 1. p. 180, l. 10. The Supreme Court of the North West Territories sitting en banc affirmed this decision. The dissenting judgment of Sifton C. J. is based on the view that the original intention of the Congregation as borne out by the documentary evidence was to vest the lands and Church in the Respondents as Trustees for a Greek Orthodox Church, and that " no evidence has been adduced to satisfy " me that the original congregation or any considerable portion thereof have " ever expressed dissatisfaction at the action of their trustees."

p. 249. The Supreme Court of Canada, the Chief Justice and Girouard J. (dissenting), in reversing the decision of the Supreme Court of the North West Territories, declared in the reasons for its decision that the said lands were intended to be p. 240, l. 40. p. 248, l. 30. vested in the Respondents by the Crown for the purposes of the erection of a Greek Orthodox Church thereon and that the said Church and lands were not intended to be for the purposes of a Church united with and subject to the jurisdiction of the Pope of Rome and the authorities of the Roman Catholic Church, and that the said lands and church have from the beginning been held by the defendants in trust for the purposes of a Greek Orthodox Church.

p. 14, ll. 1-5. p. 54, l. 28. p. 56, ll. 42-47. p. 57, ll. 1-12. p. 93, ll. 34-46. p. 94, ll. 1-3. p.102, ll.4-7. 23. It is submitted that the name " Greek Catholic " denotes the Eastern or Greek Orthodox Church, variously known as the Greek Church, the Greek Catholic, the Russian Orthodox Church and the Eastern Orthodox Russian Greek Catholic Church.

p. 55, l. 23. p. 98, l. 46 *et seq.* p. 116, l. 1. p. 108, l. 20. p. 91, l. 22. p. 99, l. 7. p. 100, l. 22. p. 148, l. 32. p. 152, l. 28. 24. Attachment to the proscribed Orthodox Church and antipathy to the authority of the Pope as the head of the Polish Church still exist among the Galicians. So far as this case is concerned this appears from the clear intention referred to in the evidence of the Settlers not to subject themselves to the authority of the Roman Catholic hierarchy and from the fact that all the priests who ministered to the Congregation took occasion to announce publicly that they were not subject to the Roman Catholic Bishop.

25. The viva voce evidence of the founders' intentions is supported by the written evidence of the Trust:

p. 162, Exhibit K. (A) The Certificate of Title to the land in question issued to the Respondents where the Congregation is described as Greek Catholic.

p. 169, Exhibit 9. (B) The requisitions for or permit to cut logs to be used in the erection of a Greek Orthodox Church upon the land in question.

pp. 165-166. Exhibit I. (C) Exhibit I, Letter of instructions from the Agent of Dominion Lands Education, accompanying the relinquishment so executed by the Roman Catholic Bishop.

The Respondents submit that the judgment of the Supreme Court should be affirmed and the Appeal dismissed for the following among other

REASONS.

1. Because the intention of the founders was that their Church should be a Greek Orthodox Church.

2. Because the intention of the founders was that their Church should not be subject to the authority and control of any Roman Catholic authority.

3. Because the land was granted by the Crown for the purposes of a Greek Orthodox Church.

4. Because the Church was built from logs given by the Crown for the purposes of a Greek Orthodox Church.

10 5. Because the Congregation was and is Greek Orthodox.

6. Because the Congregation intended to be and is independent of the Roman Catholic Church and authorities.

7. Because the reasons contained in the judgments of the majority in the Supreme Court of Canada, and in the judgment of Sifton C. J., in the Territorial Court, are correct.

R. B. FINLAY.

WM. SHORT.

HAMAR GREENWOOD.

In the Privy Council.

No. 45 of 1906.

On Appeal from the Supreme Court of Canada.

BETWEEN

THE REVEREND IWAN ZACKLYNSKI AND OTHERS *Appellants,*

AND

MICHAILO POLUSHIE AND OTHERS *Respondents.*

RESPONDENTS' CASE.

BLAKE & REDDEN,
17, Victoria Street, S.W.

In the Privy Council.

No. 45 of 1906.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE REVEREND IWAN ZACKLYNSKI, PAVLO PASEMKO, and PETRO MELNYK, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as Individuals, as Priest and Members of the said Congregation, suing on behalf of themselves and all other members and adherents of the said Congregation (amended by leave granted March 11th, 1902) . (*Plaintiffs*) *Appellants*,

AND

MICHAILO POLUSHIE, IWAN PYLYPIW and MICHAILO MELNYK . . (*Defendants*) *Respondents*,

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In the Privy Council.

No. 45 of 1906.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE REVEREND IWAN ZACKLYNSKI, PAVLO PASEMKO, and PETRO MELNYK, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as Individuals, as Priest and Members of the said Congregation, suing on behalf of themselves and all other members and adherents of the said Congregation (amended by leave granted March 11th, 1902) . (*Plaintiffs*) *Appellants*,

AND

MICHAILO POLUSHIE, IWAN PYLYPIW and MICHAILO MELNYK . . (*Defendants*) *Respondents*,

RECORD OF PROCEEDINGS.

RECORD.

In the Supreme Court of Canada.

No. 1. Certificate of Registrar of Supreme Court of Canada, 26th May, 1906.

In the Supreme Court of Canada.

Between

Michailo Polushie, Iwan Pylypiw and Michailo Melnyk . (*Defendants*) *Appellants*,

and

Reverend Iwan Zacklynski, Pavlo Pasemko and Petro Melnyk, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as Individuals, as Priest and Members of the said Congregation, suing on behalf of themselves and all other Members and Adherents of the said Congregation (amended by leave granted March 11th, 1902) (*Plaintiffs*) *Respondents*,

and

Reverend Iwan Korchinski . . . (*Defendant*) *Respondent*.

I, Edward Robert Cameron, Registrar of the Supreme Court of Canada,

RECORD OF PROCEEDINGS.

RECORD.

In the Supreme Court of Canada.

No. 1. Certificate of Registrar of Supreme Court of Canada, 26th May, 1906 —*continued.*

hereby certify that the printed document annexed hereto marked A. is a true copy of the original case filed in my office in the above appeal, that the printed documents also annexed hereto marked B. and C. are true copies of the factums of the Appellants and Respondents respectively deposited in the said appeal, and that the document marked D. also annexed hereto is a true copy of the formal judgment of this Court in the said appeal; and I further certify that the document marked E. also annexed hereto is a copy of Volume 37, Number 2, of the official reports of the Supreme Court of Canada containing on pages 177 to 209 both inclusive, the reasons for judgment delivered by the Judges of this Court when rendering judgment.

(Signed) E. R. CAMERON,
Registrar.

Dated at Ottawa this 26th day of May, A.D. 1906.

No. 2. Statement of Case for the Supreme Court of Canada.

In the Supreme Court of Canada.

Statement of Case.

This is an appeal from the judgment of the Supreme Court of the North-West Territories, en banc, dismissing with costs an appeal by the Defendants from the judgment of the Hon. Mr. Justice Scott, after the trial at Edmonton, in favour of the Plaintiffs for the recovery of lands, keys, and moneys in question and costs.

In the Supreme Court of the North West Territories, Northern Alberta Judicial District.

No. 3. Statement of Claim, 6th April, 1901.

In the Supreme Court of the North-West Territories Northern Alberta Judicial District.

Between

Reverend Iwan Zacklynski, Pavlo Pasemko and Petro Melynk, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N. W. T., and also as Individuals as Priest and Members of the said Congregation, suing on behalf of themselves and all the other Members and Adherents of said Congregation (amended by leave granted March 11th, 1902) . *Plaintiffs,*

and

Reverend Iwan Korchinski, Michailo Polushie, Iwan Pylypiw and Michailo Melnyk *Defendants.*

Statement of Claim.

1. The Plaintiffs are the Trustees of the Congregation of the Greek Catholic Church at Star, formerly known as Edna or Limestone Lake, in the district of Alberta, and were duly elected as such on the 12th day of February, A.D. 1901,

in conformity with a resolution duly passed by said Congregation in pursuance of Section 10 of Chapter 36 of the Consolidated Ordinances of the North-West Territories, intituled "An Ordinance respecting the holding of Lands in Trust "for Religious Societies and Congregations."

2. The members and adherents of the Greek Catholic Church, sometimes known as the United Greek Catholic Church, at Star aforesaid, in or about the year A.D. 1893, applied to the Government of Canada for a grant of land for the purpose of erecting a church for the holding of public worship according to the tenets, faith, rites and ceremonies of the Greek Catholic Church, and the Defendants Michailo Polushie, Iwan Pylypiw and Michailo Melnyk constituted themselves as a committee, with the tacit approbation of said members and adherents, for the purpose of taking the necessary steps to obtain title to said lands. A grant of legal Subdivision 1, Section 27, Township 56, Range 19, West of the 4th Meridian, was promised by the Department of the Interior, and the erection of a church was proceeded with, a large number of the members and adherents of said Greek Catholic Church, including the said Michailo Polushie, Iwan Pylypiw and Michailo Melnyk, who were then members of said Church, contributing in money, materials and labour to the erection thereof. In the year 1899 a patent was issued for said land to the said Michailo Polushie, Iwan Pylypiw and Michailo Melnyk (their names being written therein as Mikel Puleechy, John Pylypiw and Mikel Melnyk) "in trust for the purposes of the Congregation of "the Greek Catholic Church at Limestone Lake in said district," and on the 6th day of July in said year a certificate of title was duly issued upon said patent to the said Patentees in trust as aforesaid. The construction of the said church was completed in or about the month of September, A.D. 1899, and from the date of said certificate until the time of the acts hereinafter complained of the said land has been and still is registered in the names of the said Patentees in trust as aforesaid.

3. In the year 1900 the Plaintiff, Reverend Iwan Zacklynski, was duly appointed by the proper ecclesiastical authority of the said Greek Catholic Church to the charge of the said Congregation and accepted said charge, and for a length of time regularly held public worship in said church according to the tenets, faith, rites and ceremonies of the said Greek Catholic Church.

4. At a regular meeting of the Congregation of said Church held on or about the 18th day of December, 1900, three Managers were elected for the purpose of attending to all the business matters of the said Congregation, their names being Paulo Pasemko, one of the Plaintiffs, Michailo Melnyk, one of the Defendants, and Michailo Podruski, who was elected as Treasurer. Immediately after their election Iwan Pylypiw, one of the Defendants, and Fedir Melnyk, who up to that time had held the moneys belonging to said Congregation, handed over all moneys in their hands to the said three Managers so elected, and the said money was kept thenceforward by the said Michailo Podruski.

5. On Sunday the 27th day of January, 1901, the said Treasurer, Michailo Podruski, carried the moneys of the Congregation to the house of Petro Melnyk, one of the Plaintiffs, for the purpose of having the same counted. While there the Defendant Michailo Polushie entered said house and forcibly took away from said Michailo Podruski all the moneys of said Congregation, amounting

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

No. 3. Statement of Claim, 6th April, 1901 —*continued.*

to $59.55, and also took away the key of the church belonging to said Congregation.

6. In or about the said month of January the Defendants Michailo Polushie, Iwan Pylypiw and Michailo Melnyk severed their connection with the said Greek Catholic Church and became members or adherents of the Russian Orthodox Church, of which Church there is a large congregation at Wostok, where there is a church used by said Congregation, some miles from the church of the said Greek Catholic Congregation. At or about the same time a priest of the said Russian Orthodox Church, the Defendant Reverend Iwan Korchinski, claiming to have been duly appointed to the charge of the said Russian Orthodox Congregation by the proper ecclesiastical authority of his Church, arrived in Alberta and has since that date exercised authority over the said Russian Orthodox Congregation. The key of the said Greek Catholic Church has, since the 27th day of January, remained in the posession and under the control of the said Michailo Polushie or of the Defendants jointly.

7. On the 9th and 10th days of March, A.D. 1901, the Defendant Reverend Iwan Korchinski held services in the said Greek Catholic Church according to the rites and ceremonies of the Russian Orthodox Church, and announced that he alone had control over and authority in the said Church. He also took away certain candles, images, pictures and other personal property belonging to the said Greek Catholic Congregation, and replaced them by articles brought there by himself, and announced to those present that they must forswear allegiance to the Pope of Rome and must acknowledge that the head of their Church is the Czar of Russia, to whom they must swear fidelity and obedience. Since said date the Defendants have refused to the Plaintiffs, and to all the members and adherents of the Greek Catholic Church, admission into the said church or the privilege of holding services therein according to the rites and ceremonies of the said Greek Catholic Church.

8. On the 14th day of March the Plaintiffs formally demanded of the Defendants the delivery to the Plaintiffs of the certificate of title for the above-mentioned lands, and the key of the said Greek Catholic Church erected thereon. On the following day the Defendants refused to comply with said demand.

9. By the acts above complained of the Plaintiffs and all of the members and adherents of the Greek Catholic Church, by whom the Church on said land was erected, have been deprived of the possession of the certificate of title for said lands, and prevented from having the resolution by them duly passed as to the mode of election of successors to the Trustees endorsed upon the documents of title under which the land is held, as required and provided by Section 10 of the Ordinance hereinbefore mentioned. They have further for a length of time been excluded from the church erected by them, and prevented from holding religious services therein, according to the rites and ceremonies of the Greek Catholic Church.

The Plaintiffs (1) as Trustees as aforesaid, (2) or in the alternative as individuals as aforesaid suing on behalf of themselves and all the other members and adherents of the said Congregation (amended pursuant to a leave granted 11th March, 1902), claim :—

(A) A declaration that the lands above mentioned and the church thereon,

No. 3.
Statement of Claim, 6th April, 1901
—*continued.*

are the property of the Congregation of the Greek Catholic Church at Star aforesaid, and not of the Russian Orthodox Church.

(B) A declaration that the Plaintiffs are the legally elected Trustees of the said Congregation of the Greek Catholic Church and the legally elected successors of the Defendants Michailo Polushie, Iwan Pylypiw and Michailo Melnyk in the trust set out in the certificate of title hereinbefore mentioned.

(C) An order that the Defendants deliver up to the Plaintiffs the said certificate of title, the key of the said church and the sum of $59.55 taken by the Defendant Michailo Polushie from the above-named Michailo Podruski, Treasurer of said Greek Catholic Congregation.

(D) A perpetual injunction restraining the Defendant Reverend Iwan Korchinski from conducting services in said church according to the tenets, faith, rites and ceremonies of the Russian Orthodox Church, or at all, and from exercising any other acts of ownership or control over said church in the name of and for the benefit of said Russian Orthodox Church, or at all.

(E) Such other relief as to the Court may seem meet.

(F) $5,000 damages.

Delivered the 6th day of April, A.D. 1901, by C. de W. MacDonald of the town of Edmonton, Plaintiffs' advocate.

No. 4.
Statement of Defence of Defendants Polushie, Pylypiw and Melnyk, 7th May, 1901.

Statement of Defence of the Defendants Polushie, Pylypiw and Melnyk.

1. The Plaintiffs are not the Trustees of the Greek Catholic Church at Star, or Limestone Lake, and were never elected as such by the said Congregation or otherwise howsoever, nor were they ever appointed Managers of the said Congregation, nor did they ever have any authority from or on behalf of the said Congregation, nor were they nor any of them nor was Michailo Podruski ever elected as Treasurer of the said Congregation, nor in any way entitled to hold the property, moneys or effects thereof.

2. These Defendants are the lawful Trustees of the said Congregation, nor have the moneys, keys, properties or effects of the said Congregation ever been lawfully out of their hands since the inception of the said Congregation.

3. The said Plaintiff Zacklinski was not appointed by the proper or any ecclesiastical authority of the Greek Catholic Church to the charge of the said Congregation, nor did he ever accept charge of the said Congregation, or hold service in said church, according to the tenets, faith, rites and ceremonies of the said The Greek Catholic Church, nor is the said Plaintiff Zacklinski a priest of the said The Greek Catholic Church, or entitled to take charge of any of its Congregation.

4. The said Michailo Podruski wrongfully obtained possession of the key of the said Greek Catholic Church at Limestone Lake and of certain moneys the property of the Congregation thereof and afterwards upon request of the Defendant Michailo Polushie on behalf of these Defendants returned said key and moneys to said Polushie as the lawful Trustee of said Congregation.

5. These Defendants never at any time severed their connection with, nor ceased to be members or adherents of, the Greek Catholic Church, nor is the Russian Orthodox Church any other than the Greek Catholic Church, but is one and the

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No. 4. Statement of Defence of Defendants Polushie, Pylypiw and Melnyk, 7th May, 1901 —*continued.*

same church, nor have these Defendants and the other members and adherents of the Greek Catholic Church at Limestone Lake, worshipped or sought to worship otherwise than according to the tenets, beliefs, rites and ceremonies of the Greek Catholic Church, and all and whatsoever has been done by these Defendants has been done with the advice and approval of the majority of the members and adherents of the Congregation of the Greek Catholic Church at Limestone Lake aforesaid.

6. These Defendants were appointed and constituted by the Congregation of the said Greek Catholic Church at Limestone Lake aforesaid as Trustees thereof in or about the year 1897 and have never been removed from their said office by the said Congregation, or by any competent ecclesiastical authority at any time up till the present, and have always acted, and still continue to act in the discharge of their duties as such Trustees according to the wishes and direction of the majority of the members and adherents of the said Congregation and in conformity and compliance with the requirements of the Greek Catholic Church, and have at no time denied the same.

7. No action has ever been taken by the said Congregation to appoint successors to these Defendants as provided by Section 10 of the said Ordinance, and no meeting was ever held by the said Congregation for any such purpose, nor has the practice of the Greek Catholic Church in that behalf ever been invoked or exercised.

8. In or about the month of December, 1900, the said Plaintiff Zacklinski voluntarily severed all connections with the said Congregation of the Greek Catholic Church at Limestone Lake, and the acts, matters and things complained of occurred subsequently thereto.

9. After the said Plaintiff Zacklinski terminated his connection with the said Congregation, these Defendants together with the other members and adherents of the said Congregation requested the Defendant Korchinski to take charge of the said Congregation and a majority of the said Congregation uniting in such request, the said Defendant Korchinski entered into the spiritual charge of the said Congregation as a priest of the said The Greek Catholic Church and since in or about the month of February, 1901, has continued to have spiritual charge and oversight in and over the congregation, and is now lawfully priest thereof and has conducted and still conducts service in the said church, according to the tenets, faith, rites and ceremonies of the Greek Catholic Church and not otherwise.

10. The Defendants never at any time acknowledged allegiance to the Pope of Rome, nor did the Defendant Korchinski at any time require them to swear fidelity and obedience to the Czar of Russia as the head of their Church or otherwise nor is the said Czar of Russia the head of the Greek Catholic Church.

11. The Plaintiffs never demanded of these Defendants the delivery of the certificate of title for the said land, or the key of the said church.

12. The Plaintiffs never were entitled to the possession of the said land or the certificate of title, nor have they ever been excluded from the said church, nor did the Plaintiffs erect the said church, nor are they entitled in any way to the custody or control thereof.

13. The Plaintiffs do not in any way represent the said Congregation of the said Greek Catholic Church at Limestone Lake, but on the contrary are members or adherents of the Roman Catholic Church.

14. By way of further defence these Defendants say,—That in or about the month of December, 1900, and before the acts complained of, the said Congregation of the Greek Catholic Church at Limestone Lake terminated the tenure of office of the said Plaintiff Zacklinski, and said Plaintiff thereafter ceased to hold or exercise the office of priest in the said Congregation.

Delivered this 7th day of May 1901 by Messrs. Short & Cross, advocates for the said Defendants.

Reply to defence of Defendants Polushie, Pylypiw and Melnyk.

No. 5. Reply to Defence of Defendants Polushie, Pylypiw and Melnyk, 8th May, 1901.

The Plaintiffs, in reply to the defence of the Defendants Polushie, Pylypiw and Melnyk, say as follows :—

1. They join issue.

2. As to paragraph 5 of said defence—The Greek Catholic Church and the Russian Orthodox Church are entirely different bodies and have no connection with one another ecclesiastically or otherwise.

3. As to paragraph 9 of said defence—The services conducted in said church by the Defendant Korchinski have been according to the tenets, faith, rites and ceremonies of the Russian Orthodox Church, and are in many respects different from those of the Greek Catholic Church.

4. As to paragraph 10 of said defence—The Pope is the spiritual head of the Greek Catholic Church and the Czar of Russia is the spiritual head of the Russian Orthodox Church, and the said Defendant Korchinski did require the members of said Congregation to swear fidelity and obedience to the Czar of Russia as the head of their Church, thereby in substance and effect if not literally requiring them to become members of the Russian Orthodox Church.

5. As to paragraph 13 of said defence—The Plaintiffs are not members or adherents of the Roman Catholic Church, but of the Greek Catholic Church whose rites and ceremonies in many respects differ from those of the Roman Catholic Church but which acknowledges the Pope as its spiritual head.

Delivered this 8th day of May, A.D. 1901, by C. de W. MacDonald, of the town of Edmonton, Plaintiffs' advocate.

Defence.

No. 6. Defence of the Defendant Rev. J. Korchinski, 7th May, 1901.

Defence (amended by leave granted May 15th, 1902) of the Reverend I. Korchinski who saith,—

1. This Defendant for his defence says that in or about the month of February, 1901, the Trustees of the Congregation of the Greek Catholic Church at Limestone Lake, in the said district and territories, requested him to become priest thereof and the said Congregation appearing to be unanimous or nearly so in their said request, this Defendant with the approval of the said Congregation held service in the church in question, according to the faith, rites and ceremonies of the Greek Catholic Church, upon two separate occasions after which certain people

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No. 6. Defence of the Defendant Rev. J. Korchinski, 7th May, 1901 —*continued.*

of the said Congregation expressed their disapproval of this Defendant holding service in the said church, whereupon, and before the writ issued, the said Defendant wholly ceased to hold further service in the said church or in any way to concern himself in the business of the said Congregation or its affairs.

2. That this Defendant is a priest of the Greek Catholic Church lawfully appointed as such and duly authorised by his bishop, being the proper ecclesiastical authority in that behalf.

4. This Defendant has at no time required the members or adherents of the said Congregation to swear allegiance to the Czar of Russia, or in any way to transgress the law of the land.

5. This Defendant claims no interest in the said Church property and effects.

6. This Defendant denies that he at any time took away or misapplied any personal property whatsoever of the said Greek Catholic Church at Limestone Lake aforesaid.

Delivered this 7th day of May, by Messrs. Short & Cross, of the town of Edmonton, in said district and territories, advocates for this Defendant.

No. 7. Reply to Defence of Defendant Rev. J. Korchinski, 8th May, 1901.

Reply to defence of Reverend Iwan Korchinski.

The Plaintiffs in reply to the defence of the Defendant Korchinski delivered this day say as follows:—

1. They join issue.

2. As to paragraph 1 of said defence—If any such request were made the same was made by individual members of said Congregation who had severed their connection with the Greek Catholic Church and joined the Russian Orthodox Church and the whole of said Congregation, with but few exceptions, have neither consented to nor approved of said request or the alleged performance by said Korchinski of the duties as priest of said Congregation.

3. As to paragraph 2 of said defence—Said Defendant Korchinski is a priest of the Russian Orthodox Church and not of the Greek Catholic Church, the said two Churches being entirely separate and distinct from one another and having no connection ecclesiastically or otherwise.

4. As to paragraph 3 of said defence—That whensoever said Defendant Korchinski has conducted worship in said church he has done so according to the tenets, faith, rites and ceremonies of the Russian Orthodox Church aforesaid and not according to those of the Greek Catholic Church and has in no respect complied with the practice and teaching of the said Greek Catholic Church.

Delivered this 8th day of May, A.D. 1901, by C. de W. MacDonald of the town of Edmonton, Plaintiffs' advocate.

Evidence at Trial.

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Evidence at Trial.

No. 8. Opening Statement and Defendants' Application to Amend, 15th May, 1902.

Edmonton, 15th May, 1902.

C. de W. MacDonald for Plaintiffs.

William Short for Defendants.

Statement of claim amended on Plaintiffs' application on 11th March last. The amendments are shown on my copy of pleadings.

Mr. Short now applies pursuant to notice to amend statement of defence of Defendant Korchinski. He reads his own affidavit sworn 14th May, 1902, and abstract of proposed amendments. After hearing counsel, and counsel for Plaintiffs having stated that if the amendments are allowed certain proceedings taken by Plaintiffs would be rendered unnecessary, I state that I will allow the amendments only on terms that Applicant will pay Plaintiffs not only the costs of and occasioned by the amendments, but also the costs incurred by Plaintiffs of all proceedings already taken which the amendment will render necessary, all such costs to be ascertained and adjusted on final taxation. Mr. Short asks that the application stand until to-morrow morning in order to consider whether he will take the amendment on those terms. The application therefore stands until to-morrow morning.

Friday, 16th May, 1902.

Mr. Short states that he will make the amendment upon the terms stated by me. Amendments were then made as they appear on my copy of the pleadings.

Mr. Short admits that the Defendants now have in their possession the duplicate certificate of title of the lands mentioned in the statement of claim, the key of the church in question, and the sum of $59.55, moneys of the Congregation, and that before action they refused on demand to deliver them up to the Plaintiffs.

Plaintiffs' Evidence.

No. 9. Rev. W. Zoldak. Examination.

Philip Wagner sworn as interpreter from Russian into English.

Rev. Wasyl Zoldak. To Mr. MacDonald:

I came to Canada in October, 1901. I came to Alberta about February last. My home prior to coming to Canada was at Lemberg, which is the capital city of Galicia in Austria. When there I was secretary to the Metropolitan Archbishop, Szeptezki. He is an Archbishop of the Greek Catholic Church and the head of that Church in Galicia. He is under the control of and gets his directions from the Pope of Rome. There are two bishops under him, viz., one at Stanislaus and the other at Peremyszl. There are two other Archbishops at Lemberg, viz., a Roman Catholic Archbishop and an Armenian Catholic Archbishop. They also are under the control of the Pope of Rome. The language used in the ritual of the Greek Catholic Church is the old Slavonic. That used in the Roman Catholic is Latin and that used in the Armenian Church is Armenian. I know the creeds of these three Churches. It is the same in all three. They all have the same belief without any difference, but they differ in their rites. The Poles in Galicia belong to the Roman Catholic Church. All, without any exception, belong to it. I am a Ruthenian. They are not known by any other name in their own language.

I have heard them called "Little Russians" and also "Red Russians." There are about 30,000,000 Ruthenians. I believe that outside of Galicia the most of the Ruthenians are schismatic, that is they are separated from the Church of Rome. The Ruthenians in Galicia are Roman Catholics. They belong to the Roman Catholic Church, but the rite is of the Greek Church. They belong to the Archbishop of the Greek Catholics. If there are Roman Catholics and Greek Catholics in the same village—if there are two churches—the Roman Catholics go to theirs and the Greek Catholics to theirs. If there is only one church both Roman Catholics and Greek Catholics go to the same church. If there are churches of both denominations there, Roman Catholics are permitted to go to the Greek Church and vice versâ. If the only church is a Roman Catholic Church the adherents of the Greek Church there are under the spiritual control of the Archbishop of the Greek Church, but they are permitted to attend the Roman Catholic Church there. The present Metropolitan of the Greek Church in Galicia has held that position for about a year. Archbishop Dembrotovicz was the third last to hold that position. He was a cardinal of the Church of Rome.

Q. What Churches which are permitted by law to exist in Galicia? Mr. Short objects to this question because it is not shown that he is competent to give evidence upon the point submitted to him. I receive the evidence subject to the objection. *A.* The Greek Catholic, the Roman Catholic, and the Armenian Church. No others are permitted. There are Jews and Protestants in Galicia. They have places of worship there and are permitted by the Government. The Royal Family of Austria is Roman Catholic, and for that reason the three first-named Churches are the main Churches. The Jews and Protestants are permitted to worship there. The three first named are established by law and others are permitted to worship, except the Orthodox Church, which is a Russian Church. There is one such church in Lemberg which is for the Russian consul and his suite there, but the police forbid Galicians worshipping there. There are Orthodox Churches in Bukowina. They belong to the Greek Orthodox Church. They have an Archbishop at Czernowitch, and he is under the Patriarch of Constantinople. The reason the Orthodox Churches are permitted in Bukowina and prohibited in Galicia is because the Orthodox Churches in Bukowina and Roumania are not under the control of the Russian Synod. The Roumanians are the descendants of Slavs and Romans, and have a language of their own which differs from Russian. It resembles the romance languages. There are some Roumanians in Bukowina. As far as I know there are no adherents of the Orthodox Church in Galicia except the Russian consul and his suite. I do not know of any Greek Catholics in Europe who are under the Pope of Rome except those in Galicia. It is known as the Greek Catholic Church, but the members of that Church are sometimes referred to by the Roman Catholics as "Uniates." I was educated as a priest partly at the high school at Lemberg and afterwards at the seminary at Rome. All Greek Catholic priests are not educated at that seminary, but there are always some being educated there. There is no bishop of the Greek Catholic Church on this continent, nor has there ever been one to my knowledge. I came to this country by an order from the Pope in order to visit the people of my Church. I am a priest of the Greek Catholic Church and I was ordained by Archbishop Joseph Semprotovicz, who was formerly the Metropolitan of the Greek Catholic Church

in Galicia. In coming to America, as there was no bishop of my Church here, my duty was to report to the Roman Catholic bishop in the first place I came to. Upon my arrival I went first to Ottawa. I reported to the Roman Catholic bishop there. Upon arriving here I reported myself to Bishop Legal. I visited the people of my faith in Manitoba, Assiniboia and Saskatchewan before coming here. I reported myself to the head of the Roman Catholic Church in each of these places. The lands upon which Greek Catholic Churches in Galicia are built are held in the name of the Archbishop of that Church, but the deeds are deposited in some Government office for protection. In the case of Roman Catholic Churches the lands are held in the name of the Archbishop of that Church. I know of no case in Galicia where the lands are held in the name of trustees. The creed of the Roman Catholic Church differs from that of the Orthodox Church in that we as Roman Catholics recognise the Pope as the Head of the Church; the others do not. We believe in purgatory; the others do not. We believe that the Holy Ghost proceeds from both the Father and Son; the others believe that it proceeds from the Father alone. We believe in the Immaculate Conception of the Virgin Mary; the others do not believe in it as we believe. We believe in the Infallibility of the Pope; the others do not. I have never attended a service of the Orthodox Church. I have read a little of their ritual, but very little. Their liturgy and ritual differs but little from that of the Greek Catholic Church. Both use the same language in the ritual, viz., the old Slavonic. In the Russian language the word "Orthodox" is "Pravoslavni." It is the same in Ruthenian. In the old Slavonic language it is the same. The word "pravo" alone means "right." The word "slavni" means "honoured" or "glorified." The word "Pravoslavni" has the same meaning as the Greek word "Orthodoxus." The word "Pravoslavni" occurs several times in the liturgy of the Greek Catholic Church. I am familiar with the ritual of the Roman Catholic Church. The book now shown me is a Roman Catholic missal. It occurs in the Canon of the Mass in that book. There is a portion of the ritual of the Greek Catholic Church corresponding to that Canon and is there called the Canon of the Mass.

Cross-examination. To Mr. Short:

Cross-examination.

When I came to Edmonton this suit had been commenced. I did not come to Edmonton on account of this litigation. After I came here I was told that I would be required as a witness. When I give my evidence I will start on a visit to other missions. My duty is to visit the people of my Church in Canada. I was ordained a priest in 1899. I obtained the whole of my religious education in Rome. I have never lived anywhere but in Italy and Austria. I lived five years in Italy. The doctrines of my Church are the same as those of the Roman Catholic Church.

Q. Is the government of your Church that of the Greek Church or that of the Roman Catholic? *A.* My Church is governed by an Archbishop who is under the Pope.

Q. Is the form of your Church government that of the Greek Church or that of the Roman Catholic? *A.* I do not know what you mean by the word "form."

Q. Is your Church ruled the same as the Greek Church or as the Roman Catholic Church? *A.* The government and discipline of my Church is the same

as the Roman Catholic Church, and we receive instructions from the Pope. The priests of our Church are permitted to marry, but those of the Roman Catholic Church are not. In our Church communicants take communion in both kinds. In the Roman Catholic Church they take one kind only. The holy days in the two Churches are not the same.

Q. Are the saints of your Church recognised as such by the Roman Catholic Church ? *A.* They are.

Q. Are not some of the saints of your Church counted schismatic by the Roman Catholic Church ? *A.* No.

Q. What is the saint for the 15th of July in your Church ? *A.* According to the Julian Calendar, which we observe in our Church, the saints for that day are St. Vladimar and Saint Kyril. The Pope allows the Greek Catholic Church to keep St. Vladimar's day as a holy day. St. Vladimar is a saint in the Greek Calendar. He was a Russian. In his day there was no difference between Russian and Ruthenian. He was canonised by the Catholic Church. The Catholic Church is the only Church which can make a man holy. By the Catholic Church I mean the Church under the Pope. The Pope declared him a saint.

Q. Was it not the Patriarch of Constantinople who canonised him ? *A.* He has no right to canonise a saint.

Q. Did he not assume to canonise many saints ? *A.* After the Greek Church separated from the Church of Rome the Patriarch did claim and exercise the right to canonise saints, but not before that.

Q. Is it not a fact that St. Vladimar is canonised as a saint only in the Russian Church ? *A.* He is recognised as a saint both by my Church and the Orthodox Greek Church in Russia. I think and I am sure that Saint Vladimar got his canonisation from the Pope. He was among the first Christian Princes of Russia. I understand that he was baptised as an Orthodox Christian, but not Orthodox Christian, that is an Orthodox Roman Catholic Christian.

Q. Do you know that in order to canonise in the Russian Church the consent of the Emperor, the clergy, and the people must be obtained ? *A.* I do not know. My Church does not seek to uphold the Czar of Russia. The book now shown me is a breviary of the Greek Catholic Church published with the approbation of Cardinal Levitzki. He was Archbishop and Cardinal at the time it was published in 1847. The passage in the breviary pointed out by you refers to St. Vladimar and praises him for establishing the Orthodox religion, that is orthodox belief as I believe it. It refers to him as the founder of that belief. It is a prayer to him. The latter part of it is as follows :—" Pray to get salvation for rulers of Russian Empires. Christ loving Emperor and his many subjects." The book you now show me does not belong to our Church. It belongs to the Church Defendant Korchinski belongs to. In our country it is called the Schismatic Church. In Russia it is called the Greek Orthodox Church. It is a prayer book of that Church. It contains a prayer, the latter portion of which is the same as the portion of the prayer I have quoted from our breviary. The two books are not the same. Ours from the beginning refers to the Pope, while the other does not mention him. The Pope is mentioned more than once in our breviary. This is the first time I have seen a prayer book of the Greek Orthodox Church like the one now shown to me. Exhibit A has been interpreted to

me and I approve of it. The forms of worship referred to in Exhibit A are the forms in the book. I know they are similar from history. Both came from Greece. I also know it is a fact. I call myself a Greek Catholic because the rites are Greek, and I belong to the Roman Catholic Church. I do not know whether the Orthodox Greek Church claims to be Catholic or not. The word "Catholic" is derived from the Greek word "Catholicus." I have no other reason for calling myself a Greek Catholic. Formerly the priests of our Church were all educated at Lemberg. In later years some of them were educated at Rome. The school in Rome was opened only about seven or eight years ago, and there is room there for only 16. My Church is sometimes called the Uniate Church, but it is oftener called the Greek Catholic. Both priests and people call it the Greek Catholic, but it is oftener called that by the priests than the people. I think there are Uniates in Russia. I have read in history of a large number of Uniates in Russia becoming members of the Orthodox Greek Church in 1839. I have read in history of Bishop Siemaszko. It may be that those who became members of the Orthodox Church called themselves Greek Uniates and not Greek Catholics. They resided in what is now Russian Poland. A large number of Greek Uniates lived in Galicia. It was in the year 1595 that the Greek Church in Galicia united with Rome. It was under Pope Clement the Eighth. Prior to that they were under the Patriarch of Constantinople. The union was first accepted by the bishops and afterwards by the people of Galicia. It may be that some of the people did not want to accept the union. All Ruthenians in Galicia at the present day want to be under the Church of Rome. There are no priests of the Greek Church in Galicia who do not desire to be under the Pope. I have heard of Galicians making pilgrimages into Russia. I have never heard of their going there to get books of the Orthodox Russian Church. In Austria all religions are free except the Russian Orthodox. The large number of Bukowinians speak the same language as the Galicians. Bukowina never belonged to Russia. A number of Bukowinians are soldiers in the Austrian army. Some of them are stationed at Lemberg. I do not know whether they have their own priest with them. The soldiers in Austria are free to go to any Church they like. I do not know that there are Churches of the Russian Orthodox faith in Galicia. The Greek Catholic Church, both in Galicia and Bukowina, is generally called the Ruthenian Church. The people call it the Ruthenian Church. They are firm in their fidelity to the Pope. I do not know of any uprisings in Galicia against the Austrian Government. There may have been some political uprising. I do not know whether there are any Galicians who are not loyal to Austria. I think they are all loyal to Austria, and that they are loyal to the Pope also. I think that the Greek Orthodox Church under the Patriarch of Constantinople would not be prohibited in Galicia, but I know of no such church there. It was from a professor in the High School at Lemberg, when I was at school there, that I heard the Russian Orthodox Church was forbidden in Galicia. That is, the professor told the students that Galicians were forbidden to go to that church. I never read the Austrian laws on the subject. All my knowledge of the law on that question was gathered from what I have heard. I never studied the laws of that country. I know that the Armenian language is used in the Armenian Churches in Galicia, because I have heard it in the Armenian Church in Lemberg, and I have seen it in their books. I do not know the language.

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Plaintiffs' Evidence.

No. 9.
Rev. W. Zoldack
—*continued.*

It was in 1595 that the Greek Uniate Church in Galicia first got the name of the Greek Catholic Church. The meaning of the word "catholic" is "universal" or "general." It has been used from the second century after Christ. From the time of the Great Schism in 1044 the Western Church was known as the Roman Catholic, and that of the East as the Greek Catholic. There were several branches of the Eastern Church which were under different patriarchs. The inhabitants of Galicia call themselves "Rusyny." [The interpreter states that the translation of this is "Russians."] They call the inhabitants of Russia "Muscovites." The common people of Galicia call them "Muscovites." The educated people of Galicia refer to them also as "Rusyny." The name Russ, pronounced "Roose," was the name given to the ancient people in and about the neighbourhood of Kiev. The Ruthenian word for "red" is "czerwonyj." The Ruthenian word for persons of fair complexion is "rusiavyj."

Re-examination.

Re-examination. To Mr. MacDonald:

In our Church a priest who is unmarried when he becomes a priest cannot afterwards marry. A married man may become a priest, but a priest cannot marry. The great Church festivals in the Greek Catholic Church are St. Vladimar's day and St. Jehosophat, St. Kyril, and St. Methodius. Not all these days are kept by the Greek Orthodox Church. St. Jehosophat's day is not celebrated in that Church. Corpus Christi is a great feast day in our Church, a festival of the first class. The Greek Orthodox Church does not keep it. On great Church holidays in our Church we use the rite of the Benediction of the Blessed Sacrament. I do not know that it is used by the Orthodox Greek Church. The seminary at Rome where I was educated for the priesthood is supported by the Austrian Government for students of the Greek Catholic faith. Other seminaries are maintained there by other nations for their students. In the missal of our Church, which I now read from, there is the following prayer:—"I shall pray more to the "Holy Catholic Arch-Priest, the Pope of Rome." That prayer is at the beginning of the service.

[It is admitted that the corresponding prayer in the Greek Orthodox Church is as follows:—

"Again let us pray for the most holy Governing Synod [If subject to a "Metropolitan, 'Again let us pray for our Metropolitan N'] and for all our "brotherhood in Christ."]

Witness resuming:

In our missal book there is contained a prayer for "The Holy Catholic Arch-"Priest, the Pope of Rome, and for our Lord the Metropolitan (naming him) and "for the Bishop (naming him)." On the same page appear the words "And "all the Orthodox Army is his," the word "Pravoslavni" being used for "Orthodox." There is also a prayer in our missal, "And we pray for our Lord "the Catholic Arch-Priest, the Pope of Rome, and for our Lord the Metropolitan "Archbishop and for our Lord the Bishop, and for all monks and for our brothers "and for all Orthodox 'Pravoslavni' Christians." The Ruthenians are called also "Little Russians." The Great Russian or Muscovite language is entirely distinct from the Ruthenian. Ruthenians do not understand the other language

unless they have studied it. I think Defendant Korchinski is a Great Russian, or what we call "Muscovite." I do not know how long the rite of the Benediction of the Blessed Sacrament has been in use in our Church.

Right Reverend Emile J. Legal, Roman Catholic Bishop of Pogla and Coadjutor Bishop of St. Albert. To Mr. MacDonald:

I was ordained a priest in 1894 in France, and I became a bishop in 1897 in Canada. I have been in Rome. I have studied the history of the Roman Catholic Church. It was part of my course of study. The Greek Church is the portion of the Christian Church not in communion with Rome which uses the Greek or Oriental liturgy. The Greek Catholic Church of Galicia is a portion of the Roman Catholic Church using a liturgy in the Slavonic language. I have heard it called by the name of "The Uniate Greek Church." We also call it "The United Ruthenian Church" and "The United Greek Ruthenian Church." I would call them Catholics of the Ruthenian rite to distinguish them from Catholics of the Latin or Roman rite. The Greek Catholic Church of Galicia has exactly the same creed as the Roman Catholic Church, but I believe their liturgy is that of the Greek or Eastern Church, which is very different from that of the Roman Catholic Church. There is a great difference also in the vestments. There are several Roman Catholic bodies other than the Greek Catholics in Galicia using rites different from the Latin rite, such as the Armenians, the Syriac, the Coptic and the Maronites. The Greek Catholic Church in Galicia is governed by a hierarchy which is under the Pope of Rome. The head of the Church in Galicia is the Metropolitan of Lemberg. He exercises jurisdiction over the Greek Catholics of Galicia, and over all Roman Catholics in Galicia. The Armenian Catholics in Galicia have a special Archbishop of their own. Each Archbishop exercises jurisdiction over those only who are of his own rite. If Greek Catholics go to a place where there is no hierarchy or bishop of their own rite, they are enjoined to submit themselves to the Roman Catholic hierarchy there, but they must return to their own rite as soon as an opportunity occurs. Under the laws of our Church, where Greek Catholics come into a diocese it is the duty of the Bishop to provide for them as soon as possible a priest of their own rite. In the meantime he looks after their spiritual interests by providing for them a priest of the Latin rite. The word "Orthodox" is used in our Church, but not in connection with the name of the Church. The word is used to designate that portion of the Greek Church which is not united with the Roman Catholic Church. That portion of the Greek Church styles itself the Greek Orthodox Church. The word "Orthodox" was never to my knowledge used as part of the name of the Roman Catholic Church, but we use the word in our ritual in the ordinary sense. There is not to my knowledge any Orthodox Greek Church in Galicia. There is no bishop of the Greek Catholic Church on this continent. It was about the year 1897, at the time I was made bishop, that I became aware that there was a body of Greek Catholics in my diocese. They were at a place near Star P.O., so I visited them several times—at least four times. We held several meetings together. Sometimes

at a private house, and sometimes at Limestone School House. I have seen as many as 60 or 70 persons at some of these meetings. I have seen the following persons at some of these meetings, viz., Mr. Polushie, his son, who acted as my interpreter, Peter Melnyk, one of the Plaintiffs, Michael Mclnyk, one of the Defendants, Mr. Fenyak, Ivan Pylypiw, and Mr. Spaczinski, who acted as precentor. I cannot remember the names of the others. I think these were present at more than one of the meetings. The first meeting I held was at the School House. I sent my interpreter around to notify the people of the meeting. I think Father Norman, a priest of the Latin rite, went out with me on that occasion. I said Mass at that meeting according to the Latin rite. I also spoke to the congregation through my interpreter.

[Mr. MacDonald proposes asking the Witness what he said to the people at that meeting through the interpreter. Mr. Short objects to the evidence on the ground that it is not the best evidence, that the interpreter should be called, or at least the evidence should be of what the interpreter said, not what the Witness said to him. Also on the further ground that the evidence is not relevant to the issue: that if relevant the facts must first be proved before the declarations can be received in evidence. I receive the evidence subject to these objections. Mr. MacDonald states that he consents that the evidence shall go in subject, not only to the objections taken, but also to any other objections that Defendants may hereafter raise as to its reception.]

Witness resuming:

I am not positive that all those whose names I have mentioned were present at that meeting, but some of them were. Polushie, the interpreter, his father and Szpaczinski were there, but I am not certain as to the others. At that first meeting I spoke to the people before saying Mass. I told them that I wanted to do all I could for them. After the Mass I told them that I had been asked by some of them to secure some land which had been selected by them for a church, and in which some burials had been made. I told them that I would try to secure it for them. I told them also that I would try to procure them a priest of their own rite as soon as I could. They appeared to be satisfied with what I said. I gathered this from what the interpreter told me and from the expression of their faces. A number of them had requested me while I was at Star on that occasion to try and procure the land for them. I told them on that occasion that I was the Coadjutor Bishop of the Diocese and they were well aware of the fact. After Mass on that occasion I addressed them on spiritual matters and then we talked business together. I saw no indications of any dissatisfaction among them as to the manner in which I had said Mass. I was appointed bishop in June, 1897. The first meeting I have spoken of must have been held either in July or August. At one of the meetings I attended out there Father Nestor Dmytrow, a priest of the Greek rite, was there. I had previously seen him at Edmonton. I was then aware that he had visited those people without my knowledge. I found his name in a Catholic directory, and wrote to the bishop of the place where he had been stationed to ascertain his standing and found that he was truly a priest of

the Greek rite, duly ordained. After I ascertained this he went back to the settlement with my permission. I arranged with him for a meeting with him on a Sunday at Star. I went there according to appointment and a meeting was held in the same school house, at which Mass was said according to the Greek rite. I was present during the whole service. At the close I, as bishop, gave the Pastoral Benediction. There were about 60 or 70 people at the meeting. I think that all whose names I have mentioned were present. After the service was over I addressed the people present, Father Dymytrow acting as interpreter. I spoke to them on the subject of building a church and told them I had already taken steps to secure the land. We had a general conversation together. They said they would do what they were asked. So far as I know and could see, the meeting was harmonious. I saw no indications of any discord, nor did I notice that any objection was taken to me as bishop or to my taking part in the meeting. Father Dmytrow was there only on a visit and remained there about a month. I attended meetings there after he left. I said Mass once there after he left. It was in a private house. I said it according to the Latin or Roman rite. It was at the house of Michael Polushie, the Defendant. The weather was stormy, and but few attended. There were about 10 persons present. I saw no signs of dissatisfaction among them. After Mass I spoke to them about business matters connected with the church. I took steps to secure a priest of the Greek rite for the church by writing to the Propaganda, which is a department of the government of the Church intrusted with the affairs of Church missions abroad. As a result of that a priest of the Greek rite, Father Paul Tymkiewicz, was sent out here. He arrived during the holy week of 1898. That is the week before Easter. He came to me at St. Albert and showed me his testimonials. I then authorised him to take charge of the congregation of Star, or Edna, as it was then called, and to minister to the spiritual wants of all the people of his rite in my diocese. A few days after his arrival I left for Europe. I returned from Europe in November, 1898. I went out to Star some time in 1899. It was after the title to the church land had been put in the name of the Church Trustees. That had been done during my absence in Europe. I do not remember whether I said Mass on that occasion. I visited the people of the parish with a Polish priest named Father Olceski, of the Roman rite. He interpreted for me. I don't remember that we had a regular meeting. I drove through the settlement and called on several members of the Congregation. I cannot remember those whom I called upon. I was cordially received by all. After the visit, and I think about July, 1900, another priest of the Greek rite named Father Zacklynski came here. He called on me at the mission in Edmonton. After the departure of Father Tymkiewicz I had written the Propaganda about another priest. Father Poliwka came in answer to that request. He came as far as Winnipeg, where I met him in October, 1899. He never came into this diocese. I instructed Father Léduc, the Vicar-General, to give him jurisdiction over the parish at Edna for one month, and he was instructed to come in at the end of that time to have them renewed. I saw him for the first time when he called about the expiration of the month for the renewal. His jurisdiction was renewed until the coming to St. Albert of the Apostolic Delegate, who was expected. The Apostolic Delegate is the Pope's representative for Canada. The saints who were recognised as such by

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No. 10. Right Rev. Bishop E. J. Legal —*continued.*

the Church prior to the division between the Eastern and Western Churches in the year 1054 are still recognised by both branches. There are degrees in the solemnity of the feasts of certain saints. Only a few of them are kept in the manner that Sunday is kept, that is, as feasts of obligation. These feasts of obligation differ with the different nationalities of the Church. They differ not only with the nationalities but also with the countries, as for example, there are slight differences in that respect between the Province of Quebec and France. The prayer for the rulers of the Russian Empire, Christ loving Emperor and his many subjects, which appears in the liturgy of the Galician Greek Catholic Church, appeared in the old liturgies of that Church and remains there because it was never directed to be expunged. St. Kyril and St. Methodius are supposed to be the authors of that liturgy. I recollect a similar instance of this in our liturgy. Reading from our liturgy in the service for Good Friday I find a prayer for "The Christian Emperor," which refers to the Emperor of the Holy Roman Empire which ceased to exist many years ago. It remains in our liturgy, but it is not read, as it is considered obsolete. I find also in our liturgy among the prayers for different people a prayer for "Our Emperor" with a note stating that the name of the Emperor must be mentioned. That also is obsolete and is not read. The liturgies of our Church, including that of the Galician Catholic Church, can only be altered by the Pope or by the Congregation of the Rites, which is a department of the government of our Church which, under the Pope, decides matters of ritual. I have been in Rome and I know that there are special seminaries maintained there for the purpose of educating the priesthood of the different nationalities. There is one for the Greek Catholic Church of Galicia, others for Canada, France, Ireland, Germany and other nationalities. There are others for Greek Catholics under the supremacy of the Pope, other than the Galician Church. As understood by our Church the terms "Catholic" and "Roman "Catholic" are wholly synonymous, that is, they both refer to the whole Church. St. Kyril and St. Methodius are saints of our Church. They were subjects of the Pope and were sent out by Ignatius, Patriarch of Constantinople, before the division of the Eastern and Western Churches in the year 1054. When I first went to the Edna settlement I was aware that two priests of the Greek Orthodox Church had been in the settlement before me.

Cross-examination.

Cross-examination. To Mr. Short:

I never lived among the Galicians at Edna. My connection with them dates from 1897. Prior to that I had not studied the matter of their religion from a historical standpoint outside my ordinary studies. I had made no special study. After my ordination as bishop I then looked into the question to some extent to acquire a knowledge of their situation. I don't claim to have made a profound study of it. The Greek Church as opposed to our Church is looked upon as schismatic by our Church. We look upon the Presbyterian and Methodist Churches as heretical. The difference between heresy and schism is that the former is a difference of faith and the latter is merely a want of submission to the true government of the Church. The hierarchy of the Eastern Church is not recognised by our Church as a hierarchy. We recognise the hierarchy of the Uniate Church.

[It is admitted that the Roman Catholic Church recognises the validity of the orders of the Greek Orthodox Church, that is that their bishops, priests and deacons are validly ordained, and in the event of their submission to the authority of the Pope they are received into our Church without reordination.]

The word "Catholic" means the Universal Church established by Christ. It was already used in the second century and may have been used in the first. Originally there was only one Christian Church and the term "Catholic" was applied to it. After the schism of 1054 our Church designated the Greek Church as the Greek Schismatic Church and our Church as the Roman Catholic Church. I never lived among people professing the Greek Orthodox faith. I have never made any exhaustive study of the history of that Church from its standpoint. I have never read any of its books. Any knowledge I have is derived from the works of Roman Catholic writers. I would be surprised that ministers of Protestant Churches had gone to visit the people at Edna whom I visited. They may have gone there to visit their own people in that neighbourhood. The people I visited there are religious people very much attached to religious observances. The people were poor when I first visited them, as they had arrived in the country only a short time before. I did not apply for a priest of their own rite until some of the Congregation had requested me to do so. I am of course anxious that they should not leave my Church. I promised them assistance towards building their church and in providing them with a priest. The rule in our Church is that where there is no corporation the Bishop is the administrator of all Church property and holds the titles. Father Zacklynski was not sent out as the result of my application to the Propaganda. His arrival here was the first knowledge I had of him. He left here without obtaining my permission. I met him in Calgary and he told me that he was leaving for a month's visit to his people in Manitoba. I do not know the Saints' Calendar of the Uniate Church. I do not profess to know the force of the prayer for the salvation of the rulers of the Russian Empire which has already been referred to. I cannot say that any of the Defendants ever came to me at St. Albert seeking my assistance in Church matters. Deputations from the Congregation did come to me there, but I cannot say that any of the Defendants were with them. The persons who came to me inquired what could be done for them in Church matters, and I promised that I would do what I could for them.

Re-examination. To Mr. Beck:

Re-examination.

The Greek Orthodox Church is now heretical as well as schismatic. When I spoke of the Roman Catholic Church, as distinguished, I meant all, of whatever rite, which were united to the Pope of Rome.

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No. 11. Nicolai Spaczinski. Examination.

Nicolai Spaczinski. To Mr. MacDonald:

I came to Alberta on 1st March, 1897, and settled upon a farm about 1½ miles from the church in question. I came from Galicia and am a Russian, that is, what is called a Little Russian. In Galicia there are no Great Russians. I came from a village in the district of Buczacz. I belonged to the Greek Catholic Church there. The members of our Church are called "Uniates" by other nationalities, but not by our own. I live about two miles from the Defendants other than Korchinski. They live nearer the church than I do. The church is about midway between their farms and mine. I did not know any of them in Galicia. I made their acquaintance at Wasyl Feniak's, which was the first place I stopped at. I knew that their religion was the same as mine because they came from Galicia and all the Russians in Galicia are of the same religion. The Defendant Pylypiw told me that he came from the village of Nybylu in the district of Kalusz. The Defendants Polushie, Melnyk and Wasyl Feniak each told me that they came from that village. I arrived here on 1st March. Father Nestor Dymtrow came about 18th April following. He was the first clergyman that I saw in that settlement. I saw him the first time he held service in the Edna School House. Among those I remember being at that service, who lived in my neighbourhood, were Fedor Melnyk, the Defendant Polushie, the Plaintiff Melnyk, the Defendant Pylypiw, Wasyl Feniak, Ilko Synatovicz, Andreas Paisz, Petro Kinavz, Iwan Sachman, Wasyl Lubuszuiski, Nikola Peczkowski, Iwan Tinniak, the Defendant Melnyk, Nikola Melnyk, Iwan Danczuk, Constantine Nymyrski, Lewko Prochinski and others. Mass was sung at that meeting. Anton Sowka, Iwan Hawrylanki and I acted as precentors. The Mass then sung was the same Mass that I had been accustomed to sing in Galicia. The priest had books and we, as precentors, also had books. The priest sang a portion of the Mass, and we sang a portion. The book from which the priest sang was the same as ours. The first thing Father Dymtrow did after coming here was to consecrate a cemetery on Sec. 27, Twp. 56, being the same section on which the church stands.

Q. What else was done about the cemetery? *A.* Father Dymtrow told us to fence it and put up a cross. He told us to collect some money and to go to town and make the entry. He told this to all of us. He appointed a committee from among us for the purpose. It consisted of Constantine Nymyrski, Iwan Danczuk, the Defendant Melnyk, the Defendant Polushie and Iwan Sachman. I was instructed by the Committee to mark down what was collected. I marked down on a card what amounts were collected. The Trustees who were afterwards appointed bought a book, and I made the entries in the book from the card. It was about a year after I made the entries on the card that the book was procured. I continued to make the entries in the book up to the time Father Zacklynski came, at which time I was appointed to another office in the Church. I could not attend to both, and Iwan Melnyk was then appointed to make the entries in the book. I recognise the book now shown, marked X 1 for identification. It is the book in which all the income and expenses of all the people in the Church. It is in my handwriting. It is the book in which the entries were made by me from the card I have referred to. The first four lines of the first page were the only entries made by me from the card. On the sixth line of page 3 is an entry made by me of the arrival of Father Tymkiewicz. We had the book at the time he

came, and I wrote his arrival in it. I now say that the first two pages and first five lines on 3rd page were written on a card before we got the book, and were transferred by me from the card to the book. I made some of the entries on the card and the Defendant Pylypiw made some. Ten of us went around the settlement to sing and collect money. The Defendant Melnyk kept the money that was collected. I wrote the entries from the card into the book immediately after the Committee gave the book to me. All the Defendants other than Korchinski and also Wasyl Feniak were present with me at the house of Fedor Melnyk when I made the entries from the card into the book. They saw me doing it and they read it. The whole page 3 of Book X 1 is in my handwriting. Also pages 4, 5, and 6, and 7. At the foot of page 7 is an entry in these words, " When Father Zacklynski " arrived, $11.00." This is under date " N. 7.", which means the seventh Sunday after Pentecost. On page 8 the first two lines were written by me. The third was written by Iwan Melnyk. The top line on page 17 is in my writing. The whole of page 18 is in my writing, also the whole of pages 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, the upper half of 35, the whole of 36 and 38, and also the writing on the covers.

[Mr. MacDonald applies to have the book put in as the record of the proceedings of the Congregation of the Church in question ; also on the ground that it was made by the Witness as the Agent and Secretary of the lay Defendants, also that as to the entries made in their presence those entries are the same as if they were statements made in their presence.

Mr. Short : As to the portion I object to its reception because it has not been shown that there is any privity between Plaintiffs and Defendants ; that it does not purport to be a record of the proceedings of the Congregation or kept or examined as such ; that it has been shown that the portion copied from the card is the original record of that portion, and that before it is tendered a translation of it should be produced and proved. Mr. MacDonald asks leave to further examine the Witness before tendering the book as evidence.]

Witness, resuming :

I made the entries in the book so that I might keep track of the receipts and expenses. I did it because the Father Tymkiewicz and the Committee asked me to act as Secretary. The Committee that Father Tymkiewicz appointed were the Defendants Polushie and Melnyk with Fedor Melnyk and Wasyl Feniak, and I as Secretary. Afterwards the Committee was changed by substituting Iwan Pylypiw for Wasyl Feniak and Fedor Melnyk. When I had entries to make in the book I wrote them at the house of Fedor Melnyk. The Committees are appointed by the people who are ruling the Church, and the Trustees are the people who hold the title of the land. The three lay Defendants and Fedor Melnyk were generally present when I made the entries. There was no other book in which entries were made regarding the Congregation. The entries in the book made by me are correct entries of the matters and proceedings referred to therein. The card upon which the entries were made by me which were afterwards transferred by me to Book X 1 wore out in my pocket and I threw it away.

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No. 11. Nicolai Spaczinski —*continued.*

[I state that I receive the book X 1 subject to the objections raised by Mr. Short to its reception.] Put in and marked Exhibit A.

It is admitted that the following is a literal translation of the first page of Exhibit A :—

" In the year 1897,—Note for the first collection for the Church Greek " Catholic Roman in Beaver Creek to-day, 6th April, we have collected on " the cemetery 5,— The Priest Nestor Dymtrow consecrated. On Christmas " ten of us came together. Precentor [singer] Nikolai Spaczinski sang " Christmas songs and the pious Christians for that reason gave their offerings " for the House of God what each man had. [Names of those who gave.]"

Here follows a list of the donors, among them being the following—viz., Michael Prokopczak, Stefan Cziczack, the Defendant Melnyk, Nikolai Melnyk, Oleksa Czorny, Fedor Melnyk, Wasyl Feniak, the Defendant Polushie and the Plaintiff Melnyk.

It is also admitted that the translation of the entry beginning at the sixth line of page 3 is as follows :—" Year 1898, 6th day, 4th month. There arrived " Priest Pavlo Tymkiewicz. Presented $5.25 which we collected for " consecration of Easter Bread. Church income when Father Tymkiewicz " at Danczuk's house, 95c." Then follows a list of collections upon certain named Sundays and feast days.

It is also admitted that the following is a translation of the entry beginning on 4th line from the bottom of page 3 :—

" On 20th August departed Father Tymkiewicz and permitted Nikolai " Spaczinski to hold Matins and for that purpose the faithful will bring " their offerings for the House of God." Here follows list of Sundays, Holy-day and individual contributions.

It is further admitted that the following is the translation of the entry beginning on line 18 of page 4. " 6th day, 1st month, 1898. We drove all " over Beaver Creek singing Christmas songs and collecting offerings for the " House of God. We collected $66.00."

Here follows a list of collections for certain Sundays and feast days and of individual contributions for the singing of songs, such list extending onward to the bottom of page 6 X.

It is admitted that the following is a correct translation of the entry beginning at top of page 7. " 6th day, 1st month, 1898. We went driving to " sing Christmas songs in Beaver Creek and to collect offerings for House of " God and collected $42.00." Here follows a list of collections for certain Sundays and feast days and of individual contributions for singing of songs, such list extending to near the end of page 7.

It is further admitted that the following is a correct translation of entry on second line from bottom of page 7 :—Sunday 7,—" When arrived Father " Ivan Zacklynski, $11.00."

And of the entry at the top of page 8 :—" Sunday at the consecration of the " Church $16.10."

And on the following line :—" Sunday 2. ditto, ditto, ditto, $4.20."

It is further admitted that the following is a correct translation of the entry beginning at the top of p. 18 :—" 4th day, 6th month, 1898. We put " together voluntarily for finishing the Church " :—

Pavlo Pasempko, $15.00; Fedor Melynk, $15.00; Michail Melnyk, $5.00; Caseneir Solictzki, $1.00; Machailo Melnyk, $5.00; Michailo Polushie, $15.00; Pavlo Fedorkiw, $1.00; Pavlo Stephura, $1.00; Mikail Pedruski, $15.00; Wasyl Feniak, $5.00; and others.

Witness resuming:—

Father Nestor Dymtrow on his first visit remained only one week. Two priests came there after he left. We call them schismatic. One of them was named Father Alexandroff.

[Mr. Short admits that two priests of the Orthodox Greek Church named Father Alexandroff and Father Kamneff were in the settlement that spring.]

They remained about two weeks. I was at one meeting which they held. It was held in the open air at Fedor Nymyrski's house, which is six miles from Fedor Melnyk's house. Fedor Nymyrski is a brother of Constantine Nymyrski. They are Galicians. Up to that time they belonged to the Greek Catholic Uniate Church. The post office where the Nymyrskis live is called Wostok. Most of the Bukowinians live farther east than the Nymysrkis. There were about 50 or 60 people at that meeting. All the Greek Catholic Uniates of our settlement were at it. Mass was sung at it. It was not the same Mass that was said or sung in our Church. I could not follow the Mass closely because the priests spoke the Great Russian language, which I am not familiar with. From the time of the visit of these priests Fedor Nymyrski took no part in the affairs of our church at Edna. So far as I remember, the following Greek Catholic Uniates took part in the building of the church at Wostok, viz.,—Iwan Hawrylanko, Wasyl Pysklavetz, Fedor Rudyk, Pavlo Koborski, Iwan Halko, Iwan Lakusta and some others whose names I cannot at this moment remember. Those whom I have named live near the Nymyrskis. The lay Defendants, who were at the meeting, told me that they would not go in to help building a church at Wostok because it was too far. I knew at the time of the meeting that Father Alexandroff belonged to the Eastern or the Czar's Church. I was not willing to go into that Church.

[By consent of counsel the Witness stands aside for the present and the evidence of Defendant Korchinski, a Witness for the Defendants, shall now be taken, he having to leave this part of the country before Plaintiffs' case is concluded. It is also agreed that his evidence shall be taken by a stenographer.] [This evidence is now printed post with evidence for defence.]

15th October, 1902. Philip Wagner, interpreter.

Nicola Szpaczinski, continuing. To Mr. MacDonald:—

After Father Alexandroff and the other priest, Father Kamneff, had left, the next priest to visit the settlement was Bishop Legal from St. Albert. He held service at the school house and called the people together. The service was in Latin. I knew that it was not in our rite. Michael Polushie, Fedor Melnyk, Wasyl Feniak, Iwan Pylipiw, Michael Melnyk, Nikola Melnyk, Iwan Sachman and others were present. They remained for the service and acted as people should act in church. After the service was over the Bishop told us to wait

a while as he wanted to talk to us. We went from the school house to Michael Polushie's, and Wasyl Polushie acted as interpreter. We talked about how many Russians were around there and what religion they belonged to. We told him that our religion was Greek Catholic. The Bishop reminded us that we should keep our religion. He asked if we were building up a church. We told him that we had no church and no means to build one. We asked him to go and find a place to build one. He promised us to find a place. He told us to haul the logs and that he would find the rest of the material. He told us that he would write to Lemberg and get us a priest. Constantine Nymyrski was a Pravoslavni from the time of Fathers Alexandroff and Kamneff; also Iwan Halkow, Iwan Lakusta, and Anton Sawka. After Bishop Legal was there, the next priest to arrive was Father Nestor Dymytrow. He came in September, 1897, alone at first, but Bishop Legal came out when he was there. Service as held in the school house while they were there. It was in the Russian rite. The Bishop pronounced the benediction at the close of the service. We had a talk after the service that day. Father Dymytrow spoke to the people and interpreted for the Bishop. Michailo Polushie, Wasyl Feniak, Iwan Pylypiw, Iwan Melnyk, Michailo Melnyk, Iwan Sachman and lots of others were present. Father Dymytrow told us that all should start to haul timber. We had been talking about a particular place for a cemetery and Bishop Legal had told us that he would get us that place. That place was the place where the church now stands. After we hauled out the logs, Father Dymytrow consecrated the place. Then Father Dymytrow was out in the woods with us when we got out the logs. The getting out of the logs was the first work done towards building the church. All the Defendants, other than Korchinski, and others hauled out the logs. A number of people worked at the cutting of the logs. Father Tymkiewicz came in April, 1898. Only a few logs were hewed at that time, but there were none put together. He remained five months with us. He held services regularly at the school house, at Fedor Melnyk's, at Danczuk's and other places. Fedor Melnyk's place was close to the church. The three lay Defendants were regular attendants at these services.

[Philip Wagner retires and Eugene Androchowicz sworn as interpreter.]

When Father Dymytrow left, the walls of the church were up. I am not sure whether the roof was on. During the time Father Tymkiewicz was there, there was no trouble in the Church nor were there any disagreements among its members. I was the precentor of the Congregation and helper for the priest. I attended all the services. I had been a precentor in Galicia and also helper to the priest. The services were in the Little Russian language, that is in the language spoken in Galicia. The services were just the same as those I had been accustomed to hear in Galicia. The Creed is sung in that service. Those of the congregation who can sing do so. In our Creed we say that the Holy Ghost proceeds from both Father and Son. There was some talk between Father Tymkiewicz. He told the Congregation that some one should go and pay the entry for the land.

[Mr. Short admits that the entry for the land was first made in the name of the Roman Catholic Episcopal Corporation and that it was afterwards changed to the name of the three lay Defendants as Trustees.]

I never heard any talk between the priest and Congregation about the change in the title to the land. I heard from Defendant Polushie, Defendants Melnyk and Wasyl Feniak, when they came back from town, that the change had been made on the advice of Father Tymkiewicz. A few of the members got together and elected the Trustees to hold the land. The three who were first named were Defendants Polushie and Melnyk and Wasyl Feniak. When the paper came out for them to sign, Feniak was sick, and we took Defendant Pylypiw in his place. When Father Tymkiewicz left he told us that we should hold together as a congregation until another priest came and that we should try to keep him. He gave me two priest's books and told me that I should have prayers every Sunday and get the people to hold to their religion and that I was to give them priestly advice. Father Zacklynski was the next priest that came among us. He arrived about two years after Father Tymkiewicz left. During the interval between his departure and Father Zacklynski's arrival I held prayers and singing every Sunday and holiday. I held them in Fedor Melnyk's house until the church was finished, and, after it was finished, I held them in it. The number attending was from 10 to 20 in bad weather, up to 100 in good weather. The Defendant Polushie lived about half a mile, the Defendant Pylypiw about a mile, and the Defendant Melnyk about three miles from the church. They often came to the services held by me. They attended regularly unless they were away from home or sick. During that interval there was no discussion or difficulty in the Congregation about our belief. I have seen the paper X 3 [Ex. D] before. I saw it signed by the Defendants Pylypiw, Melnyk and Polushie and by all the others whose names appear thereon. They all signed it at the house of Iwan Danczuk, except the last four, who signed it at the house of Michailo Melnyk. It was written by Petro Stephura. I saw him write it. Others were present when he wrote it. All those who signed it were present when he wrote it. He read it. I recognise the paper marked X 5 [Ex. O] as being in the handwriting of Petro Stephura. It is signed by him. It is the same handwriting as paper X 3 [Ex. D]. When paper X 3 [Ex. D] was signed I left it with Michailo Melnyk. We then took it to McLean at Star P. O. to have seals put on it. It was at Michailo Melnyk's when I last saw it. Father Zacklynski arrived about six months after the paper X 3 was written. He arrived in July, 1900. He consecrated the church on his arrival. There was a large crowd present at the consecration. The three lay Defendants were present. There were about 200 present. He continued to hold services in the church until about 1st February, 1901. I continued to be precentor and priest's assistant under him. The first difficulty I knew of in the church was one Sunday when the Defendants Polushie and Pylypiw with Fedor Melnyk and Wasyl Feniak refused to allow a wedding party to enter a church for a wedding. Father Zacklynski and the whole wedding party were there. Some time before that, viz., in the month of December, during Father Zacklynski's stay, there was a quarrel among the members about money matters. When they counted the money together there was not enough money to finish the church. The Defendant Pylypiw was the cashier and collected the money.

[Mr. Short admits that at a meeting in the church about 19th December, 1899, at which Father Zacklynski nominated certain persons as provisors, and that the dissensions in the Congregation date from the meeting.]

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Plaintiffs' Evidence.

No. 11. Nicolai Spaczinski —*continued.*

From the time of the meeting in December, 1899, Michailo Podruski held the Church moneys. Petro Melnyk, one of the Plaintiffs, held the keys of the church after that meeting. The wedding I have referred to was that of the daughter of Iwan Danczuk. After the wedding party was refused admission to the church, Iwan Danczuk pleaded with the lay Defendants to allow the wedding to take place in the church. They finally consented and the wedding was held there. It was intended to hold Mass in the church that day and there were a large number of people there. I cannot remember where the people went to after the wedding was over. New Trustees were appointed at a meeting at Paulo Pasemko's house. It was held there because there was no other place. It was not held in the church because it is not usual and because it is not allowed to hold such meetings there. I think that the meeting was held on a Monday, but I am not positive. The Trustees then elected were the three Plaintiffs. I was at the meeting and voted thereat. None of the Defendants were present at the meeting. No other persons than the Plaintiffs were nominated at the meeting. The last time I was ever at service in the church was the day Danczuk's daughter was married. The reason I was not at service there after that was that the lay Defendants and Wasyl Feniak prevented us entering the church. Having acted as precentor during the time services were held in the church, I knew the members of the Congregation. Upon hearing read the names set out in Exhibit C, I say that all those named therein are known to me as having been members of the Congregation at the time the difficulties began in December, 1899, except the following, viz., 27, 56, 60, 68, 72, 112, 122, 125, 137, 138, 153, 182, 183, 194, 195, 198, 199, 200, 201, 202, 203, 204, 209, 210, 211, 212, 213, 214, 231, 236, 238, 246, 248, 255, 259, 262, 265, 266, 269, 270, 271, 272, 275, 276, 277, 278, 279, 285, 288, 291, 293, 294, 297, who are unknown to me. The following names in the list are not spelled correctly, viz.,—No. 93, "Lemyhrad" should be "Semyhrad"; No. 95, "Oscrsak" should be "Czersach"; No. 109, "Lowchak" should be "Sowchak"; No. 170, "Bpko" should be "Bopko"; No. 172, "Biduch" should be "Diduch"; No. 196, "Loisiuk" should be "Lysiuk"; No. 208, "Szpha" should be "Szpak"; No. 234, "Teosan" should be "Teofan"; No. 292, "Kwasmycia" should be "Kwasnycia"; No. 299, "Wojcowyer" should be "Wojtowycz." I have seen a few people present at services whose names I did not know.

[Mr. Short states that he is informed that the present interpreter, Eugene Androchowicz, has a pecuniary interest in the result of the action, and therefore should not be permitted to further interpret the evidence. Upon my questioning the interpreter, he informed me that he had entered into an arrangement with the Plaintiffs by which he was to receive $2.00 per day for his services in case they succeeded in the action, and only $1.00 per day in case they did not succeed. Upon this admission I rule that he is not a disinterested person and therefore should not, if objected to, be permitted to further interpret. Mr. Short insists upon his objection and I inform Mr. MacDonald that he must procure another interpreter. Philip Wagner resumes as interpreter.]

The following persons, whose names appear on the list Exhibit C, have, since the troubles began, ceased to be members of the Uniate Greek Catholic Church

and have gone over to the Greek Orthodox or Pravoslavni Church, viz., the three lay Defendants and Nos. 2, 3, 4, 9, 10, 12, 15, 38, 43, 55, 57, 67, 71, 75, 86, 91, 92, 124, 126, 131, 132, 188, 230, 257 and 299. There may be others on the list who have gone over, but I have no knowledge of their having done so. I cannot remember when I first heard that there was going to be a meeting at Paulo Pasemko's. After the marriage of Danczuk's daughter, Fedor Melnyk and the Defendant Polushie closed the church door and took away the key. Iwan Sachman went over to the Greek Orthodox Church before Father Zacklynski came. Iwan Halkow went over when Father Tymkiewicz came. I did not see him at church when that priest was there. He went over at the same time as Halkow. Constantine Nymyrski went over before Father Tymkiewicz came. There was no difference between the services conducted by Father Zacklynski and those conducted by Father Tymkiewicz.

Cross-examination. To Mr. Short:

Cross-examination.

Father Dymytrow on the first occasion was with us for one week, and on a subsequent occasion for two weeks. His first visit was in April, 1897. It was on his second visit, which took place in the following September, that he helped to get out logs for the church. He held service three times on the second visit. He held them in the school house. It was then that he told us to get out logs for the church. I did not see him helping to get out logs, as I was not present. I heard that he helped them to get them out. They did not get out enough logs at that time to build the church. They got out about six loads.

[Mr. MacDonald admits that the three lay Defendants, up to the time of the dissensions in the Church in December, 1900, were among the most active members and liberal supporters of the Church. They and Fedor Melnyk and Wasyl Feniak were among the first active workers in the Congregation.]

I did not know of my own knowledge that a permit had been granted for logs for the church. The first time Father Dymytrow came there were no Bukowinians in the country. I do not know whether there were any here during the second visit. There were some here when Father Tymkiewicz was there, and those near at hand attended his services. When Father Zacklynski consecrated the church a number of them attended the services, and some of them had their children baptised by him. They and the Galicians are friendly with each other. They speak the same language, and the Bukowinians belong to the Greek Orthodox Church. Some of them who belonged to that Church attended Father Zacklynski's services. On one occasion Rev. Mr. Gray and Rev. Mr. D'Easum, who are Church of England clergymen, came to my place with Wasyl Polushie, who is a son of the Defendant Polushie. I do not know of Revs. Dr. Robertson and Mr. McQueen, Presbyterian clergymen, having been there. I do not remember them. I think that the Galicians were friendly with Bishop Legal because they asked him to look for a place for the church. He did not first offer to get them a place. I do not know who spoke first about the place because, when I got to the meeting, they were talking about it. The Bishop promised to get them the land, to provide all they required for the church except the logs, and to get them a priest. I do not know whether he promised them a priest free of expense to them. He never supplied

anything for the church or got them a priest. Father Tymkiewicz told us not to take anything from the French bishop. Father Dymytrow told us to take anything we could get but not to sign anything. Father Tymkiewicz told us that if we took anything from the French bishop we would belong to his Church. He told us not to be under the control of the French bishop. He told us that Bishop Legal had offered him $50 per month to stay there, but that he would not accept anything from him. He left us because we could not support him. I do not remember that Father Zacklynski told us that he belonged to the Eastern Church. I did not hear him say it. We all belong to the Eastern Church. The Congregation as such became unfriendly to Bishop Legal because he tried to take away the church land from them and have it in his name. When he promised to get the land for them we did not know in whose name it would be held. We expected that he would take it for us and not in his own name. We were surprised when we found that he had taken it in his own name. In Galicia the churches belong to the congregation.

[Mr. MacDonald objects to the last answer as Witness is not competent to give such evidence.]

When the Congregation found that he had taken the land in his own name they determined to get it back again, and Father Tymkiewicz and a number of the members of the Congregation went to Edmonton to get the land back. They went more than once for that purpose. I think they got the land in their own names in about a month after they applied for it. I was in this country about a year before they got it. The Congregation had a meeting to get land for church. They instructed a committee to see Mr. Oliver, M.P., about it. I once went with them to Edmonton about it. The others went to see Mr. Oliver on that occasion, but I did not. I did not go to the Land Office about the matter. The Congregation told them to go to the Land Office about it. It was before the Bishop got the land that I came to Edmonton about it. After the first time the Committee went to see about the land they asked the Bishop to get it for them. I don't remember whether more than one meeting of the Congregation about the land. I don't remember of a petition being around about the land. There may have been meetings that I did not attend. I came to this country in 1897. The Congregation had regular services in the school house from the time Father Dymytrow came. It was when Father Tymkiewicz was with us in 1898 that the Trustees got the land in their own name. Before that he had several services in the school house and in the house of Fedor Melnyk. Father Dymytrow held about ten services in all during his two visits. After he left, I held services until Father Tymkiewicz came. We collected money at these services. The amount of each collection was entered in the book after each service. We began to do that when Father Tymkiewicz came. We had no collection at services before he came except at Christmas time. My first writing in the book Exhibit A is on the first page at the top. It was there I began to write in it. On page 24 is an entry made by me showing that I paid 5 cents for the book Exhibit A. I cannot tell the date of the payment. The account of expenses begins on page 24. All the expense account entries were made at Fedor Melnyk's house at different times. The expense account appears on pages from 20 to 25, both inclusive. I made the entries in the expense account as they were incurred. I began it on

page 24. The first three lines on page 17 are in my writing. It is dated 9th June, 1899. The entries in the book Exhibit A were written from time to time as they required. I did not make the entries after the trouble began. Page 1 was written by me when we first bought the book. I don't remember where I was or in whose house I was when I wrote it. I did not write in the word " Rymsko " (Roman) in the third line of page 1 after the trouble began. I began the entries on the blank book. Frequently I first wrote down the amount of the collection on any piece of paper I could find, put it in my pocket and copied it into Exhibit A afterwards. I may have done this several times and on different pieces of paper. The other members of the Congregation did not interfere. The Defendant Pylypiw would occasionally write down a memo of the amount of the collection and hand it to me. The trouble in the Church began by some one charging the Defendant Pylypiw with not having as much money on hand as Exhibit A showed that he should have. When they first made up the accounts at the meeting, Iwan Melnyk said that they were short in the money to the extent of about $74.00. The lay Defendants afterwards showed receipts for more than the amount of the shortage, but they were not correct. They were not good because they kept the box, and, if they had been good receipts, they would have been kept in the box. I always kept possession of the book Exhibit A. When Iwan Melnyk was appointed Secretary he got a new book and copied into it the entries in Exhibit A. I did not write anything in Exhibit A after the trouble began. Iwan Melnyk wrote something in it after that time. His first entries in it were memos of collections. The Treasurer always told me the amounts of the collections for me to enter them in Exhibit A, and I always entered the amounts he told me. The Defendant Melnyk was the first Treasurer, Fedor the next, and the Defendant Pylypiw the third and last. Fedor Melnyk cannot read or write. The Defendant Melnyk can only write enough to sign his name. The Defendant Pylypiw can write. Upon looking at paper marked X 3 [Exhibit D] I think that Alexander Karpetz wrote it. Petro Stephura wrote one just like paper X 3 [Exhibit D] and when I said that he wrote this I thought it was the one he wrote. I think there were about 70 families in the neighbourhood when Father Dymytrow first came. I don't know exactly how many Galician families were there when I first arrived there, but I think about 30 or 40 families. They were scattered. About 30 more families arrived there at the time I did. I made entries in Exhibit A of the arrivals of the different priests without being told to do so. There was talk of building a church near where Wostok now is. Father Kamneff held services in our neighbourhood. Most of the people attended his services. I don't know whether or not Father Alexandroff held services the next year. There were some Bukowinians in the neighbourhood when Father Kamneff held services there. Some of them came two months after I went there. They came in May and Father Kamneff came in June. I saw some of them at his services. They speak the same language as the Galicians. I do not call the Bukowinians " Little Russians." I call the Galicians " Little Russians." The Bukowinians are Roumanians. Some of them talk the same language as the Galicians, others talk Roumanian. The Galicians and the people of the Ukraine in Russia are the Little Russians. Most of the Bukowinians here talk Little Russian. Father Alexandroff wanted me to go around with a petition among the people to build a church for him, but I did not want to go. The lay Defendants and

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—*continued.*

Fedor Melnyk asked me to go around with it. They offered to pay me to go and write down all the families and get their names. I went and got the names because they paid me. I got the names of 10 or 12 families. My list was lost because nothing came of it. There was no talk of building the church in question over near Wostok. The people in our neighbourhood wanted to get a church nearer home. The Nymyrskis wanted a church near their place, but I had nothing to do with it. They are Galicians and live near Wostok. I know Anton Sowka. I know that the three lay Defendants, with Wasyl Feniak, went to one of Father Alexandroff's services. I do not know whether they had sacrament at that service. My name was not on the petition for Father Alexandroff's church. I never signed such a petition as I did not want to belong to it. I do not know that anyone put my name on it. I never told any person to put his name on it, because it was a Russian Church. I do not know how many Galicians there are on Range 20, but they have a church and church land there of their own. I think they are all Galicians in Townships 55, 56, and 57, in that Range. The church in question is in Township 56, Range 19. East of it in Range 18 there are Galicians. They also have a church and church land of their own. Some of the persons who are named in Exhibit C are probably 30 or 35 miles from the church in question. A number of them live 20 miles from it. Some of them came to the neighbourhood after the church was built and never contributed towards its erection. The people on Exhibit C had no church or church land of their own. Father Zacklynski went out to Beaver Lake immediately after the trouble in the Church. I have heard him ask people whether they were Galicians or Bukowinians. He was asking this for the purpose of finding out whether they belonged to his Church. No regular book containing the names of the members of the Congregation has been kept. All the persons named in Exhibit C who are known to me were always coming to the church in question. I sometimes went to the Roman Catholic Church here when there was a Russian priest here. I do not go now because there is no Russian priest here now. There may be some persons named in Exhibit C and known to me who have not attended the church more than once. I did not keep track of their attendance. I know Michailo Gowda. He has resided in Edmonton for some years past—for three or four years past. I know Iwan Kilar. He has also lived in Edmonton constantly for three or four years past. Peter Zwarycz does not now live in our neighbourhood. I do not know when he left or where he is now. He was there when the trouble began. Some of those named in Exhibit C may not have been in the Galician settlement at the time the trouble began. I know Jakiw Fil. [No. 284 on Exhibit C.] He came to this country, I think, two years ago last spring. He took a homestead at Beaver Lake. I do not know whether he ever lived on it. There may be some in the list Exhibit C who took up homesteads and left them to work elsewhere.

Re-examination.

Re-examination. To Mr. MacDonald:

I came only once to Edmonton to see about changing the title of the land. I don't remember being at the Land Office with the others on that occasion. I went with them to see Mr. Oliver about it. That was before Tymkiewicz came. The first time I heard about the land being in the Bishop's name was when he and the Trustees went to the Land Office and found it. Before he came we once

counted the money and compared it with the accounts in the book. We did this at Fedor Melnyk's house. When he was there the Defendant Melnyk took up the collections. He would tell me how much he collected, and I would enter the amount in Exhibit A. I never counted the money. I told you that Petro Stephura had written papers X 3 [Exhibit D] and X 5 [Exhibit O]. I afterwards in reply to Mr. Short stated that it was Karpetz who had written X 3 [Exhibit D]. This last statement is correct. He wrote it at Iwan Danczuk's house, and there all the signatures in the first column were affixed to it. We went from there to Michailo Melnyk's house, where the remaining signatures were affixed. After they were affixed, Petro Stephura wrote X 5 [Exhibit O] when both papers were sent to Father Zacklynski. Karpetz read X 3 [Exhibit D] to the people at Danczuk's, and Stephura read X 5 [Exhibit O] to them at Melnyk's. When I was in Galicia I sometimes went to the Roman Catholic Church. I never attended the service of the Orthodox Greek Church in Galicia, and therefore I never attended a service of that Church there. When I went to Father Kamneff's service, I did not know to what Church he belonged. I was told that he was of the same religion as myself. When I attended his services, I saw that there was a difference between it and that of my Church. I noticed that in his there was a prayer for the Czar and all his family. When they asked me to join their Church I said, "Why do I want to join your Church when we have our own King here to pray for." I never agreed to join the Greek Orthodox Church. When we were at Father Kamneff's service the lay Defendants told me that they would stick to the Greek Catholic Church. The Defendant Polushie was the strongest against the Orthodox Church. The paper I carried around with me, when I went to get the names of the families at the request of the lay Defendants, was written out by me. There were about sixty names on the paper. I did not give it to any person. I lost it. Nobody signed the paper, I took the names down myself. The paper contained the names and nothing more. When I went to the people I asked them if they wanted to belong to that Church. There was no written heading to the list of names. Nothing but the names. Michail Gowda goes often to Star on business of his employers. I have seen him at five or six Sunday services in the church there. He put down his name for $25.00 for the church, but did not pay it. Petro Zwarycz wrote for Father Zacklynski to come. I was at the house when he wrote the letter. This was at a meeting at Fedor Melnyk's house about half an hour before. All the lay Defendants were present when Zwarycz wrote the letter. They asked him to write the letter and they collected the money to send to the Father. The Defendant Melnyk and Pylypiw collected the money to send to him for railway fare and travelling expenses. Jacob Fil moved into Edmonton about two years ago last spring.

Re-cross-examination.

Re-cross-examination. To Mr. Short:

I have never seen any Greek Orthodox Churches in Galicia. I lived in two different places there about 15 or 20 miles apart. Father Kamneff in the services prayed for Queen Victoria as well as for the Czar and his family.

Mr. MacDonald tenders as evidence document marked X 3. Mr. Short objects on the ground that it has not been sufficiently proven. Mr. MacDonald calls attention to the fact that the last witness states that it was signed by the three lay Defendants. I admit it. Put in and marked Exhibit D.

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No. 11. Nicolai Spaczinski —*continued.*

Mr. MacDonald tenders paper marked X 4 as a correct translation of Exhibit D. No objection. Put in and marked Exhibit E and read.

Mr. MacDonald tenders the following portion of the examination for discovery of the Defendant Korchinski, viz. [Parts printed post, Exhibit F]. Mr. Short calls my attention to the following portions which should be read with the portions put in, viz. [Parts printed post, Exhibit F]. Examination marked Exhibit F.

Mr. MacDonald tenders following portions of examination for discovery of the Defendant Pylypiw, viz. [Parts printed post, Exhibit G]. Examination marked Exhibit G.

Mr. MacDonald tenders the following portions of the examination for discovery of the Defendant Polushie, viz. [Parts printed post, Exhibit H]. Examination marked Exhibit H.

Mr. MacDonald tenders the certificate of title for property in question issued to the lay Defendants on 6th July, 1899. Examined copy to be put in, in lieu of original. Marked Exhibit K.

No. 12. Iwan Melnyk. Examination.

Iwan Melnyk. To Mr. MacDonald:

I was born in Galicia. I came to this country on 20th May, 1898. I now live at Beaver Greek. I belong to the Greek Catholic Uniate Church. My post office is Star. I live two miles from it and two miles from the church in question. I have lived in my present abode for over four years. When I first went there the walls of the church were about nine feet high. Father Tymkiewicz was there when I arrived. He held services in the school house near the Defendant Pylypiw's house. He also held them at Fedor Melnyk's house and other places. The place nearest to the church where he held services was Fedor Melnyk's house. He held them there oftenest. Father Tymkiewicz left after harvest the year I came. He held services every Sunday and every holy day when there. I often attended them. Fedor Melnyk, the Defendants Polushie, Melnyk and Pylypiw, Wasyl Feniak and others attended them. Father Tymkiewicz held the same service as I used to hear in Galicia. All the people liked him. There was no trouble of any kind when he was there. I did not give any money towards building the church, but I gave $7.50 in lumber and hauled it for them. The three lay Defendants, Wasyl Feniak and Fedor Melnyk were active about building the church. Before Father Zacklynski came I was aware that he was coming. I heard the members of the Congregation talking about his coming. I handed over a letter to the Trustees, the lay Defendants. It was written by Petro Zwarycz. I heard them ask him to write to Father Zacklynski as he could write better than they could. We were at the church when they asked him. About 50 or 60 people were present at the time. It was at a meeting. The Trustees asked me to go. They told Zwarycz to write to Father Zacklynski to ask him to come there. They told us that they wanted money to pay the Father's expenses in coming. I gave 30c. towards them. I paid it to the Defendant Pylypiw. The Defendant Melnyk was collecting also. I don't know how much was collected.

I was present when Father Zacklynski consecrated the church. It was some time in August or September, 1900.

[Defendants admit that he arrived about 20th July, 1900, and that he consecrated the church on 5th August following; also that the three Trustees, the lay Defendants, were at the consecration; also that from that time up to the dispute which arose in December following, they were more or less regular attendants at the services in the church; also that the meeting at which the trouble about the appointment of provisors arose was held at the church about 18th December, 1900.]

I was in church when Father Zacklynski announced that new provisors had been appointed. Those he said were appointed were the Defendant Melnyk, Paulo Pasemko, Petro Melnyk. He also said that Michailo Podruski was appointed cashier. The Defendants Polushie and Pylypiw stated that they did not want to be provisors and that we might have new ones. Up to that time Fedor Melnyk held the key of the church. At that meeting the Defendant Polushie handed it to the new provisors. They gave up the church box on the following Sunday. Polushie gave the key into the hands of Paulo Pasemko. I was present when the box was handed over. The key and the box remained in the hands of the new provisors until 27th January, 1901. On that day I was at Petro Melnyk's house. Paulo Fedorku and his wife and Petro Melnyk and Michael Podruski were there. Podruski was there with the church money, which amounted to $59.55. While we were there the Defendants Polushie and Melnyk, Fedor Melnyk and Wasyl Feniak came in. Polushie told Podruski to give him $36 and some cents for fire insurance, which he had paid. Podruski told him that he could not give him the money as he would have to ask the provisors. Polushie then said, "You have got to give it." Podruski asked me to advise him whether he should pay the money. I told him that if Polushie showed a receipt for the fire insurance, he had better pay him. He then asked Polushie for the receipt. Polushie pulled out a paper from his pocket and handed it to Podruski. He then grabbed the church box in both arms and held out his thumb to Podruski saying, "You can have that." I did not see the church key on that occasion. The signatures to the paper now shown me (marked X 8 for identification) are those of Father Zacklynski and myself. I saw him sign it and I signed it myself. I cannot read English. Father Zacklynski interpreted it to me in Russian and I signed it. The present Trustees of the Church are the three Plaintiffs. They were elected on 10th February, 1901, at a meeting held at Paulo Pasemko's house. I knew a week before the meeting that it was going to be held. Father Zacklynski gave orders in church to have a meeting for new Trustees. What he said was, "We will have a meeting on Sunday to elect new Trustees." I don't remember whether the day he gave the notice was on Sunday or a holy day, but it was on some day before the meeting was held. I went to the church on the day appointed for the meeting. The three lay Defendants and Wasyl Feniak did not want to let us into the church. Danczuk asked them for admission because his daughter was to be married. We got into the church, and Father Zacklynski performed the marriage ceremony, and after the ceremony he performed Mass. There were many people present. After Mass we went to Fedor Melnyk's house, where

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Iwan Melnyk
—*continued.*

Father Zacklynski lived. We went there to hold the meeting, but Fedor Melnyk and the three Trustees would not let us hold it there. Fedor Melnyk told Father Zacklynski to get out of his house. We went from there to Paulo Pasemko's house. Neither the lay Defendants nor Fedor Melnyk nor Wasyl Feniak accompanied us. We held the meeting at Paulo Pasemko's that day. Father Zacklynski was chairman and I was writing down for whom they voted. The three Plaintiffs were proposed for Trustees. No others were proposed. Father Zacklynski told them that they would have to have new Trustees. Each man answered his name aloud and said that he voted for the three Trustees nominated. We did not finish the meeting that day, but adjourned until 12th February at the same house. I took down on paper the names of those who were present and voted. I think there was more than one piece of paper. I gave them to Father Zacklynski. There were 120 present and voted at the first meeting and 43 or 44 at the adjourned meeting.

I remember handing a letter to the Defendant Korchinski in town here one day. On the same day I handed other letters to the Defendants Polushie and Melnyk. I am not sure whether I handed one to the Defendant Pylypiw. This happened on only one occasion. All those letters I got from you (Mr. MacDonald).

[Defendant's counsel admits that the paper now produced is a copy of the letters so delivered by the Witness to the Defendants Korchinski, Polushie and Melnyk. Copy put in and marked Exhibit L and read. By consent an examined copy of the certificate of title issued to the lay Defendants and marked Exhibit K in lieu of original.]

I saw the key of the church on 10th February, 1901. I saw the Defendant Polushie unlock the church that day and then put the key in his pocket. The services held by Father Zacklynski were the same as those as I had attended in Galicia. The Defendant Polushie and Pylypiw asked me to join their Church, the Orthodox Pravoslavni. I answered that I had my religion, the Greek Catholic Uniate. I was near the church on Easter Sunday, 1901. I saw Father Zacklynski there, also Father Korchinski. There were, I think, three policemen there from Fort Saskatchewan. There were many people there. Father Zacklynski got there before Father Korchinski. There were about 200 people with Father Zacklynski before Father Korchinski came. Father Zacklynski and his people did not get into the church. The Defendant Polushie brought Father Korchinski there. About 50 or 60 people were with Father Korchinski. Father Zacklynski and his people were standing in the cemetery close to the church. When Father Korchinski came he stopped behind the church and had a sort of meeting of his own people there. They then came walking towards the church. They saw a cross there and Polushie, Wasyl Feniak and Fedor Melnyk called out, "That is a Polish cross, "not our cross." Father Zacklynski said, "That is not a Polish cross, nor a "German nor a Russian cross. It is a (or 'the') cross." Father Zacklynski then said to his people, "Get out your bread and I will consecrate it." Neither party got into the church because the police were there. The three lay Defendants and Fedor Melnyk and Feniak called out that the church was their church, and they told our party to get out. I only know of six or seven of our congregation

who have gone over to the Orthodox Greek Church. There may be others that I do not know of.

[It is admitted that both sides claimed the right to get into the church on that Easter Sunday, but the police would not allow either party to go in.]

I did not see anyone with a revolver there. There may have been people there who lived 20 or 30 miles distant. I saw Father Korchinski going away that day. He may have been there about two hours. I think it was about that long. I don't know which of the priests was the first to leave. I cannot swear that Father Korchinski was there more than half an hour. There were about 50 or 60 people, including women and children, in Father Korchinski's party. I never attended one of his services nor any of Father Alexandroff's or Father Kamneff's. I was present the day Father Zacklynski asked the provisors to swear. Something had been said before that day concerning the appointment of provisors. I don't remember whether they did swear, but I think they did not. I think they asked that the Trustees should be sworn first. I don't remember whether the Trustees were sworn. They refused to be sworn. There was a priest's house being built for the church. It was not finished when Father Zacklynski came. I don't remember hearing that he wanted the Congregation to borrow money to finish the house. I once heard Father Zacklynski say that he would give up the parish if they did not leave him. I don't remember his saying, after the Trustees refused to swear, that he was going to leave us. After they refused to swear there was ill feeling between him on the one part and the lay Defendants and Fedor Melnyk and Feniak on the other. At a meeting at Fedor Melnyk's house Wasyl Feniak charged him with doing away with some of the church money. I suggested that they should count up first and see. I made up the accounts and I found that there was $74 short and I told them so. Feniak and Fedor Melnyk had some high words over it. The lay Defendants or some of them charged Zacklynski with collecting money for church purposes and keeping it. He threatened at that time that he would leave if they did not pay him. He left soon after that and remained away for a short time. I don't know that he returned before the time he married Danczuk's daughter. Some of the Congregation knew that he was coming back. Others did not. When the Defendant Polushie took the church box from Podruski at Petro Melnyk's house, there were about 12 persons present. I did not see who took the box away. I was present when Father Zacklynski mentioned that Danczuk's daughter was going to be married. I was at the church the day she was married. The lay Defendants were there. I heard them tell Father Zacklynski that he was no longer priest there and that they would not let him in. They let him in merely to perform the marriage. At the meeting on 10th February —I don't know how many there were at the wedding. There were many there. I don't know whether there were 20 or 30 or 200 present. The church was full. I don't know how many it holds. When he gave the notice of the meeting he gave it in church. We were all in the church the same as usual.

I don't remember how long Father Zacklynski was away before the marriage of Danczuk's daughter. When he was away we went to church ourselves. I think that he was only a short time. I did not go around among the people to tell them about the meeting to elect Trustees. I do not know that Father Zacklynski

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did. I think the meeting at which it was arranged to send for him was held in the fall. I was present when the Trustees asked Zwarycz to write for him to come. I heard all they told him to write. I don't remember anything they told him except to tell him to come.

To Mr. MacDonald :

The meeting at which Zwarycz was asked to write was some weeks before Father Zacklynski arrived.

No. 13. Petro Melnyk. Examination.

Petro Melnyk. To Mr. MacDonald :

I have lived at Beaver Creek, near Star, for between eight and nine years. I came from Pyryhynsko in Galicia. I knew the Defendant Melnyk and Fedor Melnyk and Nikola Melnyk in Galicia, also the Defendant Pylypiw and Polushie. Pylypiw was here when I came, also Techkowski and Anton Paisz. Polushie and the three Melnyks came here about two months ahead of me. The three Melnyks I have mentioned came from the same village as I did. The Defendants Polushie and Pylypiw came from the village of Nybylu, which is about 200 yards from Pyryhynsko, where I came from. They are separated by a brook which was crossed by a plank. There was a bridge further up stream. The priest of my church at Pyryhynsko was Wasyl Nybylowicz. He had been priest there as long back as I can remember. There were two churches there, but they were the same religion. The three Melnyks attended the same church as I did. They attended it all the time until they left to come here. I sometimes went across to the church in Nybylu. There is only one church there. The Defendants Polypiw and Polushie attended that church. The service in that church was the same as that in my church at Pyryhynsko. The first services I attended in this country were under Father Nestor Dymytrow. He was twice in our settlement. I attended his services on both occasions. They were the same services as those we had in Galicia. I also attended the services of Father Tymkiewicz when he was at Star, also the services of Father Zacklynski at Star. All these services were the same as those we had in Galicia. The lay Defendants all attended the same services at Star as I did. I was once at a service at Nymyrski's place, but I do not know the name of the priest. I think that was in the same year Father Dymytrow was with us. I think the three lay Defendants attended that service. The service was in the open air and I was too far away to notice whether the service was different from the others I have referred to. We knew that the priest was a Russian priest from Russia. About the time that priest was in the neighbourhood the Defendants Pylypiw and Polushie said to me, " Perhaps we may not have our own priest here and " then we can go to them." I once heard the three lay Defendants ask Spaczynski, with reference to the names he had been taking, whether he had sent them away, and on his replying, " No," they said, " That is good. We want to hold on to " what we have always been." I remember Bishop Legal being at the Defendant Polushie's house. I was at the school house when he was there. There was a priest with him who I think was Father Dymytrow. The priest held service there. It was the same service as in my church in Galicia. [It is admitted that

the three lay Defendants were at that service.] I don't remember having again seen the Russian priest I have referred to after that year. It was when Father Tymkiewicz came that I first heard that the title to the land was in the name of the Bishop. Father Tymkiewicz was the first I heard say that it should be changed. I took part in the building of the church. I gave $18.00 in cash and some more that I cannot remember. I worked 18 days with my team on it. I know Petro Zwarycz. I was at a meeting at which the three lay Defendants were present, when they asked Zwarycz to write for Zacklynski, and at which money was collected to pay his travelling expenses. I gave $1.00 towards them. I put it down on the table and I think the Defendant Melnyk took it. I was at the meeting in December, 1900, when provisors were appointed. Pasemko was one of those appointed. I was another. Podruski was appointed Treasurer. Fedor Melnyk had been holding the key of the church up to that time. At that meeting or some time after it I saw Polushie and Pylypiw hand the key over to Pasemko. They offered Podruski the church box at that meeting, but he did not take it then. I afterwards saw Pylypiw and Wasyl Feniak hand it over to him. On 27th January, 1901, the church box, with the money in it, was at my house, Podruski having brought it there. I was there with him. Iwan Melnyk, Techkowski, Paulo Fedorku and another man, whose name I forget. The Defendants Polushie and Melnyk and Fedor Melnyk, Nikola Melnyk and Wasyl Feniak came in afterwards. When they came in I had put the church money on the table. I think the box was also on the table. We met there that day because we wanted to pay Polushie for the insurance money. When they came in, Polushie asked for the money for the insurance. Podruski said "All right. You give me "the receipt and I will give you the money." Polushie took a receipt out of his pocket. As he did so Podruski took the key of the box and was about to unlock the box when Polushie grabbed both the box and the key and held them in his possession. He then gave the box to Feniak saying to him, "You keep the box, "and I will keep the key." The two of them left the house, Feniak carrying the box. I went out with them. We went to a place near the church, where they were building a house for the priest. The builder and a stranger were there. We went there to see whether the builder had been paid enough for the work he had already done. We then went to our own homes, passing by Fedor Melnyk's place. I made no effort to get the box back from Polushie and Feniak. I did not think at that time that there was anything wrong about them having the box, as I did not think that they were going over to Father Korchinski's religion. On the evening of the day Polushie and Feniak took the box away, I went to Fedor Melnyk's house, where I found the four Defendants and Nikola Melnyk, Fedor Melnyk, Wasyl Feniak and Alexa Dwardowski.

Petro Melnyk stands aside.

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No. 14. Arthur G. Harrison. Examination.

* *Sic.*

Arthur G. Harrison, sworn. To Mr. MacDonald:

I am agent of the Dominion Lands here. I produce file of correspondence in my office relating to South West ¼ of Sec. 23, Twp. 56, Range 18, W. 4th Meridian. It consists of original letters received from the Department of the Interior at Ottawa, carbon copies of letters from my office to that Department and other original letters received in my office. The letter upon that file now shown me (marked X 9 for identification) [Exhibit M] is part of that file and appears to have been received and filed during the time of my predecessor in office. The remainder of the quarter section referred to in certificate of title, Exhibit K, and not comprised therein was homesteaded by Rev. John A. Zacklynski, priest. When an application is received to cancel a homestead entry, the applicant is unusually* notified from time to time of any steps taken for cancellation. Upon looking at the file—upon looking at the memorandum endorsed on the file relating to that land, I find that on 14th March, 1901, the Rev. J. Korchinski made an application to cancel the entry of Rev. John A. Zacklynski.

[Mr. Short admits that the settlement of Star was formerly known as the Limestone Lake Settlement.]

The entry was afterwards cancelled on that application. It is being withheld from entry until the conclusion of this trial. I produce from the file in my office relating to 10 S. E. ¼ 37–56–19, W. 4, a document (marked X 10 for identification) [Exhibit 9]. By the date stamp upon it it appears to have been received on 7th December, 1897. From the memorandum upon it I would infer that a timber permit had been granted under it. The practice in our office is to take a carbon copy as well as a letter press copy of each letter sent out. The carbon copy is placed on the file for convenience of reference.

[By consent letter from the Dominion Land Agent here to Dept. of Interior dated 25th May, 1898, is put in, marked Exhibit 1 and read.]

The letter now shown me is signed by L. Pereira, the Secretary of the Department of the Interior. It is a letter to the Dominion Land Agent here. It appears to have been received at my office on 12th October, 1897.

[Mr. Short tenders this letter as evidence. Mr. MacDonald objects. I refuse to receive it as evidence.]

Upon looking at the letter I find that the agent here was instructed that he was at liberty to report any legal subdivision within S. E. ¼ 27–56–19–W. 4th as a mission grant to the Roman Catholic Church and that the remainder of the quarter section could be homesteaded.

[Mr. MacDonald objects to this statement on the ground that it is not evidence against Plaintiffs. I receive it subject to the objection.]

To Mr. MacDonald:

I find that by a subsequent letter from L. Pereira, as Secretary of the Department, to the land agent here dated 10th May, 1898, and received at my office on 17th May, 1898, the agent was instructed that it would be well for him to communicate to Rev. Father Leduc and to ascertain from him whether he had found a Galician priest to homestead the land.

Charles de Wolf MacDonald:

I know Rev. Vladimir Alexandroff and have done business for him in connection with his Church. He was several times at my office in consultation with me and in connection with his business. He said that he would write me. On several occasions I received letters from him. I therefore say that I have a good knowledge of his handwriting. I say that the body of the paper X 9 (Ex. M], and the signature at the bottom, "Rev. V. Alexandroff, Secretary," are in his handwriting.

[Mr. MacDonald now tenders paper X 9 as evidence on grounds that the writer is a priest of the same Church as the Defendant Korchinski, and under the rule of the same bishop, and that it is in evidence that he and Father Kamneff visited the settlement near where the church in question is erected on business connected with his Church. The letter is offered to show by what name he called his Church. Mr. Short objects to its admission on ground that Defendants are not bound by statements made by another person. I receive it subject to the objection. Marked Exhibit M.]

Petro Melnyk, resuming. To Mr. MacDonald:

Dwardoski and I went to Fedor Melnyk's together that night. I heard the Defendant Pylypiw ask the Defendant Korchinski whether he could take them over to him or to his Church. Korchinski replied, "How do you want to come, "all, or how? If you should all come I will have to write to the bishop." He also said, "You look what you do. I would rather have one good man than lots "of bad ones." He also said, "If 300 men are building a church and 299 were "to come over to me, and but one man was left, the church would belong to that "one man." He explained his meaning a second time, using the number 10 instead of 300 and nine instead of 299. I told them that they could not do as they liked. Feniak then said, "We five can do as we like." I said that we would have a lawsuit about it. They said that they were going to Father Korchinski. All said this but Dwardowski. He had nothing to do with it as he was a Roman Catholic. Pasemko and I and you [the interpreter] went to Polushie's house to get the key of the church. We found him and a man named McGall there. We asked Polushie for the key of the church and the money box. He replied "I will not give it up, even if you handcuff me." I call my Church "The Greek Catholic Church." The Pope of Rome is the head of my Church. I was not opposed to the French bishop holding the land. I was satisfied with the Trustees holding it. I know Iwan Danczuk. His daughter was married in our Church by Rev. Father Zacklynski. The wedding party was in the church when I got there. Mass was first held and then the wedding service. After the wedding Father Zacklynski said that there would be a meeting for new Trustees as the old Trustees had gone to Korchinski. When I was leaving the church, I saw Fedor Melnyk and Wasyl Feniak talking to Father Zacklynski, as he was going away. They were telling him that he was no good and that they wanted to get rid of him because they wanted to go to Father Korchinski. After I got home I saw the people driving and walking to Pasemko's past my place. When I went to church that day I knew that there was going to be a wedding. Father Zacklynski had announced

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Petro Melnyk —*continued.*

it in church some time before. On the day he announced this he also announced that there would be a meeting the next Sunday which was the day of the wedding. I went to the meeting at Pasemko's on the day of the wedding and I voted for Paulo Pasemko and Father Zacklynski and the people voted for me. I knew Wasyl Feniak in Galicia. He also lived in Nybylu. I never knew or heard of any religious disputes between him and me or among the others I have named who came from Pyryhynsko and Nybylu.

[Eugene Androkovitch resumes as interpreter, with Mr. Short's consent, subject to his right at any time to raise the objection to his further acting which he has heretofore raised and which was sustained by me.]

Petro Melnyk, resuming. To Mr. MacDonald:

The following persons who are now living in the neighbourhood of Star attended the same church at Pyrohynsko as I did or Michailo Melnyk, Fedor Melnyk and Nikolai Melnyk. I knew the Defendants Pylypiw and Polushie in Galicia. They lived in Nybylu. They went to the same church there as I did in Pyrohynsko. His church there was called "The Church of the Transfiguration." That was the only church in Nybylu.

Cross-examination.

Cross-examination. To Mr. Short:

I can understand enough English to buy things in the stores. I am not on good terms with Defendant Polushie. I was on good terms with him until he changed his religion. I was also on good terms with the other lay Defendants until they changed. When they changed they started to quarrel with me, and I was afraid of them. The trouble began about the money. It was because they were short $74.00 in the church moneys. The church cash box was in Fedor Melnyk's house when the lay Defendants were first charged with the shortage. I heard Father Zacklynski telling the people alongside the church that they should not quarrel over the church money. I heard the lay Defendants telling Father Zacklynski that he had collected money for the priest's house and had kept it himself. After the row began the members took sides, some in favour of Father Zacklynski and some against. After the row some charged him with wrong-doing, and he became angry with them. I heard him say to the people in church, "If you cannot pay me the $2.00 I shall have to leave you," or words to that effect. It was before the row occurred over the appointment of the provisors that I heard this. I cannot tell whether it was in the autumn or winter that I heard this. I remember when he took his household goods from Fedor Melnyk's house. He was in my house for an hour after leaving there. The lay Defendants and those siding with them were at my place when he was there. We were all on friendly terms then. The quarrel had begun before Father Zacklynski left Fedor Melnyk's. He left there on the evening of the day he was at my house, on the occasion I refer to. The Defendants Polushie and Melnyk and some others were at my house on that occasion. They were in the outer room of my house. Father Zacklynski did not stay on that occasion.

[Mr. MacDonald here states that in order to shorten the trial he abandons the claim that Plaintiffs are the Trustees of the Congregation and relies upon

the alternative claim set up by the amendment to the statement of claim made at the beginning of the trial.]

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Petro Melnyk —*continued.*

I saw Father Alexandroff once when he was in our settlement. I cannot say whether the man now pointed out to me in Court is he. There was another Greek priest with him. This was probably about two years after I settled there. There were, I think, about 100 families there when he came. There were some Bukowinians among them. Nymyrski is a Galician. When Father Alexandroff came he held service in the open air at Nymyrski's place. He baptised some Bukowinian children, but I did not see him baptise any Galician children. I never heard of a petition to him or his bishop to send a priest. I was regular in my attendance at the church in question. Before it was erected, Spacynski held services in Fedor Melnyk's house, and I attended them. I was at one of Father Alexandroff's services at Nymyrski's. I think I saw only about six persons from my neighbourhood at that service. Nymyrski's neighbourhood is now known as Wostock. I think that the Defendant Melnyk took communion at that service. I do not remember any others. There were others, but I did not know them, or whether any of them were Galicians. The Galicians were anxious to have a priest and have services. I know nothing of the Russian Orthodox Church. I never heard a service of that Church except one by Father Alexandroff and Father Kamneff and another by Father Korchinski. I cannot tell it from my religion except that Father Korchinski swears them in and that in our country one is called "Austrian" and the other "Russian." I know that the French Roman Catholic bishop wanted to get the land upon which our church is built. He attended a meeting at Polushie's house. I heard him say there, "What is the matter with "you? You don't stay with your own religion." When Father Alexandroff was there and was trying to arrange for a church the French bishop came out and said to us, "What is the matter with you? Stick to your own religion, your "priest will soon be here." He also told us that, if we would get out the logs, he would help us to build a church. He said that if we would keep our religion he would help us and would see that we would get a priest. When we first came we did not know whether we could get the land free or not. We told him we were trying to get the land. He then said that he would help us. It was after that that Father Alexandroff came and it was after he came that the French bishop asked us why we did not stay with our religion. It was after he was there that we began to build our church. The lay Defendants got the permit from the Government to cut the logs. The members of the Congregation near at hand knew about it. Those living at a distance did not know of it. I heard that the French bishop got the land in his name. When Father Tymkiewicz came, he told us that the land should be held in our own name instead of in the name of the bishop. When he told us that we were all agreed that the land should not be held by the French Roman Catholic bishop. Father Tymkiewicz remained about six months. I was at Father Zacklynski's first service. I did not hear him say that he belonged to the Eastern Church. After Father Tymkiewicz left we may have been a year or more without a priest. We were anxious to get one. We were writing to the old country for one. When we were collecting the money Peter Zwarycz was writing for a priest. Petro Stephura was also writing for one.

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Petro Melnyk —*continued.*

Re-examination.

Re-examination. To Mr. MacDonald:

I heard Polushie asking Spacynski asking him what he had done with the paper with the names, to which Spacynski replied that it might be at home, but he did not know what had become of it. Polushie then said, "It is good that "the paper was not sent to them, because we want to stick to our own religion." The other two lay Defendants, as well as Wasyl Feniak and Fedor Melnyk, were present at the time and agreed to that statement. The first Ruthenian-speaking priest I saw at our neighbourhood was Father Dymytrow. When Father Alexandroff came, we had not seen that kind of priest in our own country and we wanted to see if he was the same as our priest. I never saw an Orthodox priest and I never heard of one to my knowledge. I heard that he was a priest from Russia and I wanted to see what he was like. After Father Dymytrow arrived we went to Defendant Polushie's house. He told us to get logs cut for the church and he went out in the woods with us to help cut them. This was after I saw Father Alexandroff at Nymyrski's.

Re-cross-examination.

Re-cross-examination. To Mr. Short:

I do not know whether Father Alexandroff was in our neighbourhood more than once. I saw him there only once. Father Dymytrow was there twice. He may have remained the first time a week or six weeks. He may have remained three or four weeks the second time.

No. 16. Ivan Workun. Examination.

Ivan Workun. To Mr. MacDonald:

I live at Rabbit Hills. I came from Galicia. I belong to the Greek Catholic Church. I belonged to it in Galicia. There is a congregation of that Church at Rabbit Hills. Father Zacklynski was the priest of that Church this time two years ago. He held services there only twice, because we were unable to pay him. I know a priest named Korchinski. I first saw him at Iwan Doblanko's house at Rabbit Hills and afterwards at Iwan Borys' house there. Borys belonged to the Greek Catholic Church. I drove with Father Korchinski to Borys' house that day. When Father Alexandroff visited Fur's house, when I saw him there, there were nine residents in all who joined his Church. When I reached Borys' house with Father Korchinski, there were about ten there of Father Alexandroff's Church and about ten others who had been invited there by Fur. These last belonged to the Greek Catholic Church up to that time. It was on a Saturday evening, and a sermon was given by Father Korchinski. Then he said, "Those who want to "join the Orthodox Russian Church can come to me to confession." Thirteen families went to confession that night. We then left. I stayed over night near there and next morning I went back to Borys' house for service. At the service on that Sunday morning at Borys' Father Korchinski, after he had heard some confessions, and before communion, said, "Those who want to join the Orthodox "Russian Church shall kneel down and pray to God." There was a crucifix in the centre of the room on a table with two candles at the side of it. The thirteen families knelt around it in a circle. When they were kneeling Father Korchinski

said something to them. I made an entry in my book at the time of what he said to them. Upon referring to that book I find he said to them, " I will speak slowly " to you and you will have to answer me so that everybody will understand, and " if some of you do not understand, you ought to ask me to explain. Do you " believe in the Holy Synod ? Do you believe in the invisible Head of the Church, " Jesus Christ ? Do you believe in the Czar Nicholas the son of Alexander, the " mighty one ? Do you promise to recognise him and be faithful to him ? Do " you renounce the Pope and his errors ? Do you renounce the Catholic religion ?" After this everyone kissed the Holy Testament, and he held Mass. After Mass he said to them, " You Orthodox Christians hold together, and you, Iwan Borys, " try to tell everybody and collect them that they shall all join my Church." The thirteen families who took the communion that day came some of them from the same village in Galicia that I did, and the others from a neighbouring village. I knew them all in Galicia. They all belonged to the Greek Catholic Church there. In the village where I lived the only church was the Greek Catholic Church. About 1½ miles distant was a town in which was a Polish Roman Catholic Church. In that portion of Galicia which I know, viz., a district within a radius of 60 miles (English) from the village in which I lived, all the Little Russians or Ruthenians belonged to the Greek Catholic Church. The Poles in that district belonged to the Roman Catholic Church. I never knew a Pole to be a Greek Catholic or a Ruthenian to be a Roman Catholic. Sometimes we would go to a Roman Catholic Church on feast days, but I never knew of a Ruthenian going to confession to a Roman Catholic Church. I did not join Father Korchinski's Church. I am still a Greek Catholic.

Cross-examination. To Mr. Short :

Cross-examination.

I went to school in Galicia in my own village and also to a soldiers' school when I was in the army. I think I attended school in my village about six or seven years. I learned to read and write there. I was a soldier for three years. When I was a soldier, I was stationed at Peranyszl the whole time of my service. I was a farmer in Galicia. I never heard of an Orthodox Russian Church in Galicia. In one of our neighbouring villages there were a few Germans, and they have their own Church, which was called the German Church. The Roman Catholic Church, which the Poles attended, was usually known as the Polish Church. That which the Russians attended was called the Russian Church. I saw Father Alexandroff at Rabbit Hills. I first saw him in Strathcona. I did not ask him to come to Rabbit Hills. He was not a full priest at that time. Father Kamneff, who was with him, said that he was going out there. Father Alexandroff interpreted for him. We said that if he was coming out, he might do so. We did not invite him. Father Alexandroff told us that we would never get our own priest. We told him that if he was willing to come, we were willing to receive him as we wanted to see what kind of religion he had. Father Alexandroff was at Rabbit Hills twice as assistant to Father Kamneff. I heard that he was there once after he became a priest, but I did not see him. I attended two services of Father Kamneff's at Fur's house, because we had no priest of our own. I never confessed or received Holy Communion either from Father Kamneff or from Father Alexandroff. I am positive as to this. At the service at Borys' on Sunday, when Father Korchinski held

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No. 16. Ivan Workun —*continued.*

service there, those that joined his Church were kneeling, and those who did not stood up. Those who knelt down were Simeon Borys, John Borys, John Cyrul, Constantine Kobylka, Dymytrow Dansovny, Andre Stycun and his son, Ilko Syrada, Nicolai Wronko, Ivan Iwasivtzsko, Iwan Kun. Those are all whose names I remember. All I have told as to what Father Korchinski said that Sunday when the people were kneeling was put down by me in my book when they were kneeling.

Re-examination. To Mr. MacDonald:

Father Kamneff did not speak our language and I could not understand him. He spoke the Muscovite Russian language.

No. 17. Michailo Chichack. Examination.

Michailo Chichack. To Mr. MacDonald:

I came to this country about three months ago. I lived in the village of Nybylu in Galicia. I have settled at Beaver Creek. I lived all my life in Nybylu, until I left there last year. When I came here, I found some people who formerly lived in Nybylu. Among them were the Defendants Polushie and Pylypiw, Wasyl and Feniak, and a number of others. There were about 14 families in all from Nybylu. The Defendants Polushie and Pylypiw always lived there until they came to Canada. Feniak came to Nybylu from another village. He married in Nybylu and lived there seven or eight years before leaving for Canada. The Defendants Polushie and Pylypiw and Feniak all belonged to the same Church in Nybylu that I belonged to, viz., the Greek Catholic Church. There was no other church there. Up to the time they left Nybylu, I never heard of any difficulty between those three men and the Church. Stefan Chichack is my cousin. He came from Nybylu. He belonged to the same Church there as I belonged to.

Cross-examination.

Cross-examination. To Mr. Short:

There are some Germans about three miles from Nybylu. They have a church. I do not know what the church was called. I never heard it called the German Church. There was no Polish Church near Nybylu. I have heard of the Polish Church. Among ourselves we call our Church the Greek Catholic Church. I never heard of the Russian Church. I do not understand much about religion, but I am a Russian Greek Catholic.

Q. Do you, among yourselves, call yourselves Russians (Ruski)? *A.* We call ourselves (Rusyn) or "Russian." When we came here we began to call ourselves Russin (or Russin) Uniates.

No. 18.
Ivan Hluszak.
Examination.

Ivan Hluszak. To Mr. MacDonald :

I came to this country from Nybylu in Galicia last summer. I live at Beaver Creek in the house of Petro Ilyniak. Those from Nybylu whom I found here were three brothers Ilyniak, the Defendant Polushie and his son, the Defendant Pylypiw, Wasyl Feniak and others. Feniak was not a native of Nybylu, but lived there for some years. I know the village of Pyryhynsko. It is about as far from Nybylu as Strathcona is from here. I went there often. I know the following persons here who came from that place, viz., Fedor Melnyk, Nikola Melnyk, the Defendant Melnyk. The latter was a native of that place, but married in Nybylu and went over there to live. When in Nybylu, I belonged to the Greek Catholic Church. The Defendants Polushie and Pylypiw and Wasyl Feniak attended the same church as I did. The Defendant Melnyk, after coming to Nybylu, also attended the same church. There was only the one church there. I have attended the Greek Catholic Church in Pyryhynsko. There were only two churches there, both being Greek Catholic Churches. Fedor Melnyk and Nicola Melnyk attended one of them. I did not know of any Poles in either of these villages. Before coming to this country I knew nothing of the religious belief of the people of Russia. The only Churches I knew of in Galicia were the Greek Catholic Church and the Roman Catholic Church.

Cross-examination.

Cross-examination. To Mr. Short :

There are some Poles near Nybylu. Most of the people where I live are " Russynyw." I do not know how far Nybylu is from Russia. I was well acquainted with the Defendants Polushie and Pylypiw ; we grew up together. I rented the mill at Nybylu from the Congregation. Michael Vendiak was my partner. The Defendant Melnyk worked for us. We called the Poles " Polaks." The people who spoke our language we called " Russynxy." We would refer to our Church as the " Ruska " Church. In Nybylu there were over 400, all speaking the same language as I do.

No. 19.
Rev. Father Philas.
Examination.

Rev. Father Philas. To Mr. MacDonald :

I came to Canada from Lemberg in Galicia about three months ago. I am a Basilian priest of the Greek Catholic Church. It is sometimes called " The Uniate Church." The head of our Church in Galicia is the Pope of Rome. Next to him is the Archbishop of Lemberg and under him are two bishops, viz., the Bishop of Stanislaus and Peremyszl. There are about two thousand Greek Catholic churches in Galicia and about the same number of Roman Catholic churches. About 50 or 60 Protestant churches and one Eastern Greek church not united with Rome. That one church is in Lemberg. They call it the " Rossysska " or schismatic church.

Q. In Galicia what is the difference between the word " Ruska " and " Rossijska " ? *A.* " Ruska " is the adjective from the root " Russ," and not from the root " Ross," and means in Galicia " our own church." " Rossijska " is an adjective which is applied to Muscovites or Great Russians. I think the Rossijska Church in Lemberg was built for the Russian consul there and for the Russian travellers.

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No. 19. Rev. Father Philas —*continued*

Q. Do you know any facts tending to show the attitude of the Austrian Government towards the Rossijsska a Church in Galicia ? *A.* About 20 years ago the inhabitants of two villages, viz., Huylyci and Huylycki, tried to go over to that Church. A number of them were arrested, as it was suspected by the Galician Government that they were trying to introduce Russian politics into Galicia. The priests of these two churches fled to Russia and died there. I was a travelling missionary in Galicia and I know the whole of it. I have also been in Bukowina as a missionary.

Q. Do you know in any part of Galicia any congregation of the Greek Church which is not under the Pope of Rome ? *A.* There is only one such church in Galicia, and that is the one I have mentioned as being in Lemberg. In Bukowina the majority of the Greek churches are not under the Pope of Rome, but the minority are under him. The three languages spoken in Bukowina are German, Roumanian and Ruthenian. A minority of those speaking Roumanian belong to the Greek Church under the Pope of Rome. Others belong to the Oriental Greek Church, the head of which is the Archbishop of Chernowitz. Others belong to the Armenian Church, which is not a Greek Church. Some of the Ruthenians in Bukowina are Uniates under the Archbishop of Lemberg and the Bishop of Stanislaw. Those who are not Uniates are under the Archbishop of Chernowitz. I was once on a mission near the villages of Nybylu and Pyryhynsko, and I knew the priests of these villages. Most of the inhabitants in that locality are Ruthenians. There are but few Polaks there. The bishops of the Greek Catholic Church in Galicia hold the lands of those churches there. The bishops of the Roman Catholic Churches there hold the lands of those churches there. There is no Greek Catholic Bishop in America, but it is intended to have one here.

Q. What is the law of your Church as to adherents being served by Roman Catholic priests ? *A.* Roman Catholics and Greek Catholics look upon each other as brothers because they have the same creed. Greek Catholics are allowed to attend Roman Catholic services when they have not got their own priests. They are also allowed to attend, like guests, festivals in Roman Catholic churches. Also in case of expected death a priest of Roman Catholic rite may be called in to administer communion. There are three priests of my Church in the Territories and one in Manitoba. When I am in Edmonton, I reside at the Roman Catholic Mission. I have held services in the Roman Catholic church here in the Greek rite. All the Ruthenians in Edmonton attended. Some of them were not Uniates. Latin services were held in the same church on the same day, but at different hours. I have attended the services of the Greek Orthodox Church in Bukowina. Apart from differences in creed, the difference in the service between that Church and mine is that in the former they use bells. There are other small differences. In our Church, in the prayer where the words " Orthodox Christians " are used, commences with a prayer for the synod. In the Greek Orthodox Church the Pope's name is not mentioned in that prayer, but instead thereof there is a prayer for the synod. I don't know what the substituted prayer is in the Greek Church in Bukowina.

Cross-examination.

Cross-examination. To Mr. Short :

My knowledge of the difference I have mentioned in the prayer is derived from

my reading. I received my education first at my native place, afterwards in Lemberg and afterwards at a seminary in Cracow. I was not sent here by the Propaganda at Rome. Father Zoldac was sent here by the Archbishop of Lemberg at the request of the Ruthenians here. I am now living at Beaver Lake. I am not under the control of the Roman Catholic bishop here. I am exempt from his control by reason of my order. I am not a secular priest. Secular priests are under his control. Father Tymkiewicz, Father Zoldac and Father Dymytrow are secular priests and were therefore under his control when here. Everybody in Galicia believes that everyone who desires to go over to the Greek Orthodox Church wishes to go over to Russia. For many generations there has been a struggle between the Polish and the Little Russians, and the latter have been kept down. In Galicia the Polish sometimes attend the services of the Greek Catholic Church and the Little Russians sometimes attend those of the Polish Church. The Austrian Government would not punish those Uniates who went over to the Roman Catholic Church, but for political reasons would punish those who went over to the Greek Orthodox Church. The Armenian Church is a branch of the Eastern Church. I am not certain that there are not more than 50 or 60 Protestant churches in Galicia, but I think there are not more than that. There are about 100,000 Germans in Galicia, many of them being Roman Catholics. Historically the Greek Church is the Eastern Church, and the Roman Catholic is the Western. The people are devoted to the religion, rites and ceremonies of the Greek Church. Whether the Uniates should belong to the Roman Catholic Church or the Eastern Church is claimed by some to have been a political question, but I cannot say whether it was or not. On the division of Poland the Uniates of that portion acquired by Russia were forced by the Government to join the Russian Orthodox Church. There are other bodies of the Eastern Church that have united with Rome. The Eastern Church says that this was accomplished by force and persecution. Except as to certain matters of creed and dogma, the services of the Uniate Church and the Greek Orthodox Church are nearly the same. There is but little difference between them. The Galicians, speaking generally, are an illiterate people. It is necessary for them to have the services of a priest.

Charles de Wolf MacDonald, recalled:

Charles de W. MacDonald. Re-called.

I speak and read and write German and understand it as well practically as I understand English. I have studied both the Great and Little Russian, or Ruthenian, languages to a slight extent, and claim no further knowledge of them than that I know the letters of the alphabet at sight and their equivalents in English writing, and can also write those alphabets slowly and with some little trouble. I produce a German-Ruthenian pocket dictionary which appears to have been published at Lemberg in 1867. I have looked at it to find the two words for "Ruthenisch" and "Russisch," which are the German words for "Ruthenian" and "Russian" respectively. I find that the word "Ruthenisch" does not appear in it, but the word "Russisch" does appear, and opposite it are the words "adj. "Rosijskij, Moskowskij." The letters "ij" are sometimes written in English as "y." Although the word "Ruthenisch" does not appear, I find that in the portion of the preface, which is written in German, there appears certain words

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Charles de W. MacDonald —*continued.*

in quotation marks of which the following is a translation: "As I arrange the "languages according to the nearness of their relationship, I treat now of the "Little Russian ('Klein Russische'), which, in the realm of science, as examination "itself displays, is to be regarded as a self-standing language and not as a dialect "of the Great Russian." On pages 5, 6 and 7 of the preface are a number of tables showing the varying form of given words in four different languages by (1) "Starosl"; (2) "Rushe"; (3) "Rossijs"; and (4) "Pols." The English translation of which is (1) Old Slavonic; (2) Russian, in the sense of Ruthenian; (3) Russian; and (4) Polish. I also produce a work in German, the title of which, rendered into English is as follows:—"A Practical Grammar of the Little Russian "('Ruthenischen') Language for Self Instruction," purporting to be published in Vienna(-:-)Pesth and Leipsic by a Hartleben; the author being Michail Mytrofanowicz. In the preface appears this statement: "In a large part of "Galicia, Bukowina, North Hungary, Southern Russia and in many localities in "the Caucasus, as also in many colonies in Roumania and South Hungary, the "population speaks Little Russian (Ruthenisch). Besides that there live also in "America several thousands of Little Russians who have emigrated there. One "can take it for granted that over 20,000,000 of souls make use of the Little "Russian as the society language." There is also a footnote as follows:—"The "Little Russians in Austro-Hungary are called 'Ruthenen' (Ruthenians), hence "'Ruthenish' equals 'Klein russisch.'"

Cross-examination.

Cross-examination. To Mr. Short:

I speak but little Russian, but I can understand much more. I am not familiar with the literature of either the Great or Little Russians. I know nothing of any standard dictionary authorised by the Government. I studied the Great Russian alphabet ten years ago. There are two alphabets of the Little Russian, one being the same as the Great Russian, and the other, which was adopted a few years ago by the Austrian Government, being a simplification of the other. The difference between them being the elimination of three useless letters from the latter. I know nothing as to the authenticity of the two works I have quoted from.

No. 20. Michailo Romaniuk. Examination.

Michailo Romaniuk. To Mr. MacDonald:

I have been in this country about ten years. I came from Nybylu in Galicia. When I got here the only two men here from Nybylu were the Defendant Pylypiw and one Ilnyiak. I knew Pylypiw in Nybylu. I was there when he left there. I knew Defendant Polushie and Wasyl Feniak in Nybylu. I left Nybylu before them. I knew Michael Melnyk. He lived in Pyryhynsko until his marriage, at which time he came to live in Nybylu. These three, viz., Polushie, Feniak and Melnyk, attended the Greek Catholic church in Nybylu. That is the church I attended. It is the only church there. I knew Fedor Melnyk and Nikola Melnyk; they lived in Pyryhynsko. I have been to the two churches there occasionally on festivals. Both churches there were Greek Catholic. Fedor and Nikola attended one of these churches there. Sometimes they came to the church at Nybylu. I knew of only one Roman Catholic in Nybylu. I think that there may have been

some in Pyryhynsko among the tradesmen there, but there was no Roman Catholic church there. I live about 14 miles from the church in question. I went to that church several times when Father Zacklynski was there. I never saw Father Dymytrow. He was not here in my time. I lived six years in Manitoba before coming here. Every time I attended Father Zacklynski's services in the church I saw the three lay Defendants there. They were always there ahead of me. I never heard of any proposition to ask Father Korchinski to be pastor of that church.

No. 20. Michailo Romaniuk —*continued.* Cross-examination.

Cross-examination. To Mr. Short:

The people in Galicia who speak the same language as I do are called "Rusyny." I can write. It was in Galicia that I first heard the term "Greek "Catholic." The word "Pravoslavni" is used in one service there. I never heard of the term "Uniates" until I heard it here.

Philip Wagner resumes as interpreter.

[Mr. MacDonald tenders letter from Defendants' advocates to him dated 15th March, 1901. Mr. Short admits the signature of his firm thereto. Put in and marked Exhibit N.]

No. 21. Pavlo Pasemko. Examination.

Pavlo Pasemko. To Mr. MacDonald:

I came to Alberta in May, 1899. I came here from Galicia. I belong to the Greek Catholic Church. In the place where I live there was no other church except a Polish Roman Catholic church. The church in question was under construction when I first came here. The outside was finished but the inside was not. I contributed $15.00 towards its erection. The old Trustees, viz., the lay Defendants, asked me to subscribe to it. I paid the $15.00 to Defendant Pylypiw in Fedor Melnyk's house. Spaczinski was there at the time and he wrote down what the people said. The lay Defendants when they asked me to subscribe said to me, "We are going to build a Greek Catholic church. We are of the same "religion as you. There are others, 'Krevo-slavni' and 'Czaroslavni,' which "glorify the Czar, but we are Greek Catholics under the Pope of Rome." I ascertained that they were the same religion as I was and I therefore subscribed. They explained to me that the Krevoslavni were not true believers in God. The church was finished some time during the year 1899. After it was finished we had a meeting and decided to write to the old country for a priest. After that we found out that there was a priest in America and we wrote to him. The lay Defendants told us about this priest. I think the name of the priest they mentioned was "Poliwka." Then Father Zacklynski wrote to the Trustees and offered his services. They then collected money and sent it to him to pay his expenses. Either the Defendant Pylypiw or the Defendant Melnyk collected the money. I subscribed some money for that purpose and paid it to one of them. The collection was made outside the church. I know Petro Zwaricz. I heard him and the lay Defendants talking together outside the church. They told him to write

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No. 21.
Pavlo Pasemko
—*continued.*

to Father Zacklynski. I did not see him write. I remember the time Father Zacklynski arrived. The first thing he did was to consecrate the church. I was at the consecration. The three lay Defendants and Fedor Melnyk were there; all the people in the settlement were there except the sick. From the time Father Zacklynski came until the row occurred about the money, the three lay Defendants were regular attendants at his services, except when they were ill or not at home. Up to the time of the row about the money I never heard any objection raised to Father Zacklynski being our priest. They were all satisfied. Up to the time of the meeting at which provisors were appointed, Fedor Melnyk kept the key of the church. After that I held the key as one of the three provisors selected by Father Zacklynski out of the twelve appointed at the meeting. The other two were Defendants Melnyk and Michailo Podruski. I remember the meeting at which new Trustees were appointed. I was one of the three then appointed. I was absent from church one Sunday and I gave Petro Melnyk the key to open the church. I never got it back from him and I do not know what became of it. Petro Melnyk and I afterwards went with a policeman to the Defendant Polushie. The policeman asked him for the key of the church and the money box. He replied, "Even if you handcuff me I will not give it back." This was a short time after I was elected a Trustee. The lay Defendants never consulted me or talked to me about procuring Father Korchinski as a priest. I never attended any of his services in that church. I was never at the church when he was inside. On one feast day I was trying to enter the church with Father Zacklynski, but the Defendants Pylypiw and Melnyk and Fedor Melnyk and Wasyl Feniak refused us admission. They said, "You people may enter the church, but we will not "let the priest in." We replied, "If you will not let the priest in, we will not "go in." There has been no service by a Greek Catholic priest in the church since that time. The only people I know of that Congregation who have gone over to Father Korchinski's Church are the three lay Defendants and Wasyl Feniak, Fedor Melnyk, Nikola Melnyk and one Koszak and Stefan Chichak and their families.

Cross-examination.

Cross-examination. To Mr. Short:

My wife was not a Roman Catholic before I married her. She was a Russian (Ruska). The people of Galicia who speak the same language as I do call themselves "Rusyny." There were Poles where I lived. Sometimes went to the Polish church and sometimes to the Greek Catholic church. There were no Germans near the place where I lived. We called our Church "The Russian "Church." We never called our Church the Uniate Church. We never call ourselves Uniates. I do not read or write. A few of my neighbours read and write. When we wanted to write for a priest we had to go to Zwaricz. I live three miles from the church. Spaczynski was the Secretary to the Trustees. I saw him writing when I paid my money and when others were paying theirs. I do not know what he did with the writing. Zwaricz had no office in the church and had nothing to do with it. I think I held the key of the church for five or six weeks. Service was held every Sunday and every holy day during the time I held it. They were held by Father Zacklynski. I got the key some time in December. It was on St. Nicholas' Day. [It is admitted that St. Nicholas' Day

was on 18th December in 1900.] I do not know when Father Korchinski came. I know that shortly after St. Nicholas' Day in 1900 Father Zacklynski went to Rabbit Hills to consecrate a church. He was away only a few days at that time. It was not a fortnight.

[Mr. MacDonald (Mr. Short consenting) puts in documents marked X 5 and X 6 for identification. Now marked Exhibits Q and P.

Mr. MacDonald (Mr. Short consenting) puts in document marked Exhibit Q—also notice to admit facts (service) admitted as of 19th March, 1902. Marked Exhibit R.

Plaintiffs' Case closed.

Defence.

[Admission as to difference of belief between Uniate Church and Church of which Witness is a member put in and marked Exhibit B.]

Rev. James Korchinsky. To Mr. Short:

Q. You are one of the Defendants in this action, are you not? *A.* No.

Q. Well, you did not understand me; you know a writ has been issued and you are included? Your name appears in this action as a Defendant? *A.* Yes.

Q. You are a priest? *A.* I am a priest of the Orthodox Greek Catholic Church or of the Orthodox Russo-Greek Catholic Church.

Q. How long since you were ordained as priest? *A.* In 1896.

Q. When did you come to Alberta? *A.* In November, 1900.

Q. Have you ministered as a priest here since then? *A.* Yes.

Q. Where? *A.* Among the congregation of the Orthodox Greek Catholic Churches in Alberta.

Q. Where have your stations been? *A.* My stations have been in Wostok, Alta.

Q. What other charges have you had—here? *A.* Edmonton, Rabbit Hills, Victoria, Red Deer, Calgary and Lethbridge.

Q. When did you first become connected with the Congregation at Edna? *A.* It was in 1901—in January.

Q. Will you state briefly how that came about? *A.* At that time, I, at Pylypiw's request, baptised his child and joined his wife to my Church.

Q. How did you become connected with this Congregation? *A.* A small meeting was held in the house of Fedor Melnyk.

Q. About what time? *A.* About the 22nd of that month.

Q. At which who were present? *A.* There were present so far as I remember —there were present Fedir Melnyk, Mike Polushie, Mike Melnyk, Wasyl Feniak, Petro Melnyk, Nicola Pechkowsky and some others whose names I do not remember.

Q. Well, what was done at that meeting? *A.* They asked me ——

[Mr. MacDonald objects to any evidence as to statements made at that

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meeting or elsewhere by any of the Defendants, or any one of them to the Witness.

Judge Scott: I receive all such evidence subject to this objection.]

Q. Well, what was done? *A.* They proposed to me to be their priest.

Q. Yes, well what else? *A.* And I asked them if they were of the same belief as I was and they asked me to explain what my belief was. I explained to them and they said their belief was the same. I then explained to them that they as Uniates were Roman Catholics and because they held the tenets of the Roman Catholic Church, if they wished to have me as priest, they must renounce those tenets, and they asked me which doctrines they must renounce. I explained to them that the doctrines of the Roman Catholic Church which we held to be wrong and which they must renounce were:—1. That the Holy Ghost proceedeth from both Father and Son. 2. The infallibility of the Pope and his supremacy. 3. The immaculate conception of the Virgin Mary and the existence of Purgatory. I explained to them why we thought these doctrines were wrong When I explained it to them they told me that my explanation was true. They asked me to acquaint them with rules, service and ceremonies of my Church. When I explained it to them they said it was the same service as their own. They asked me how they could become parishioners, and I said they must first renounce all the wrong doctrines that I had spoken of to them, and if they did renounce, they would be of the same religion as I was. They said they would have no need to renounce that doctrine because they did not believe that the Pope was infallible or had any authority over them in this country, and again they always accounted themselves as Orthodox. And after that they asked me if I would then take charge of their church. I said that I could not. I asked them if they had the right to offer me the church, and, if they had, they must apply to my Russian bishop to have me appointed. I also told them that I could serve for them as priest without application to the Bishop, but, if they wanted me to take charge of the parish, they must apply to him. They explained to me what right they had to the church. They stated that they had built the church for themselves, that they made it a condition that they never would give that church in the hands of the French Roman Catholic Bishop. On another occasion I visited Mike Polushie, one of the Defendants, there was a small meeting there. They showed me a list of names who would apply to my bishop to have me placed in charge of the parish. They showed me an application they were making to my bishop and, at their request, I gave them the address of my bishop and afterwards received permission from my bishop to take charge of the parish.

[Mr. MacDonald objects to any evidence as to permission as it must have been in writing and the writing is not produced.

Judge Scott: Was that permission in writing?

Witness: First by telegram and afterwards by letter.

I hold that the contents of that telegram and letter were inadmissible.]

Mr. Short:

Q. Did you do anything further? *A.* After that some of the people of the Edna Congregation came to my church at Wostok. I examined them before

the congregation according to the rules of my Church, as to their belief; after that I held service and gave them communion. Next I held service for these people in the church at Edna.

Q. Why did you do that? *A.* Because they asked me to come and showed me a place where we should hold service.

Q. What is the rule of your Church as to persons seeking to take communion? *A.* If a man comes and asks me to give him communion, I first confess him and, if I find he belongs to my Church ——

Q. What do you mean by confess? *A.* Examination as to his faith and his life. If a man will come and say I am of the same Church as you, I cannot take that. I first examine him and, if I find he is the same, I give him communion.

Q. Speaking of your own people, what is the rule with regard to them? *A.* The same rule—the rule with regard to my own people is the same. I will explain. If a girl or some person of my Church comes to Edmonton and goes to the Roman Catholic Church, or some other Church of any denomination, and takes communion there, without having renounced my Church, I will explain again to my people what the wrong doctrine of that Church is, in which they took communion, and after that I will ask her to renounce the wrong doctrine and will again examine her faith and I will give communion.

Q. I suppose that is if you find her belief is right? *A.* Yes.

Q. Was anything else done or said by these people that you spoke of?

Mr. MacDonald objects to question as leading.

Judge Scott: I do not think so.

Witness: I asked them if they had the right to hand over that church.

Q. Did they show you what right they had? *A.* That was before they called me, I asked them if they had the right and they showed me the document.

Q. What document was that?

Mr. MacDonald objects—withdraws objection.

A. They showed me a certificate of title for the church.

Q. You say that you went to their church and held a service; do you know when that was, when did you hold the first service in that church? *A.* I held the first service in that church in February, I think the 22nd or 23rd—on Saturday of the first week in Lent.

Q. When did you next hold service? *A.* On Monday of the last week of Lent.

Q. Do you know what date that is according to our calendar? *A.* It was about 6th or 7th April.

Q. Did you ever hold service there afterwards? *A.* No.

Q. Will you state why you ceased to hold service in that church? *A.* Because there was going to be trouble between people, and I said I could not hold service if there was going to be trouble.

Q. Have you at any time since gone to that church to hold service? *A.* No.

Q. You never since held service in that church? *A.* No.

Q. Have you taken any steps in connection with that Congregation since? *A.* I never exercised any spiritual control of the church but of the people.

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Q. What do you mean by that? *A.* I advised them to meet together and do all for the Church that they could do good.

Q. And you again certainly advised them to live a good life? *A.* Yes.

Q. Did you hold any service among these people? *A.* Yes.

Q. When did you hold service? *A.* I held service among them in their houses. Once they asked me to hold service in the church and found there was a bar on the door. They said some one must be doing trouble. I said there might be trouble and refused to hold service.

Q. You have held services in their houses? *A.* Yes.

Q. For whom was that service? *A.* For the Congregation of that church that called me—the Trustees of that church which called me.

Q. Who called you? *A.* The Trustees called me.

Q. What did you understand these people to be when they called you? To your knowledge to what Church did that Congregation at Edna belong? *A.* That time I myself was informed that they belonged formerly to my Church.

Judge Scott: Where did you get that information? *A.* From Father Alexandroff.

Mr. Short: What was your understanding as to what Church they belonged? *A.* I never saw them before and as I heard it was church which belonged to the people of the Melnyk's church—of the Huzul. When I was acquainted with them they told me they were Greek Catholic.

Q. Now what does the expression "Greek Catholic" mean? *A.* When they told me they belonged to the Eastern Church and not to the Western Church and then explained to me that the last priest that came to them belonged to the Eastern Church; their mother was the Eastern Church.

Q. Will you explain then what you mean by the expressions "Eastern Church" and "Western Church"? *A.* Western Church is the Roman Catholic Church. The Greek Catholic Church is Eastern Church I understand it, always so.

Q. Where were you educated? *A.* In Russia—southern part—called Little Russia.

Q. Are you a Little Russian? *A.* I am myself a Little Russian, born in Province of Kiev.

Q. Where is that from Galicia? *A.* Kiev—about 200 miles from Galicia.

Q. Will you explain where the Little Russians are found? *A.* Little Russians —part are found in all the south part of Russia, between the Don and Danube rivers.

Q. And where else? *A.* In Galicia and Bukowina.

Q. What have you to say as to the language spoken by the people of Bukowina and the language spoken by you. *A.* The language spoken by the people of Bukowina and the country around Kiev is the Russian language and not the Little Russian language. It is Little Russian dialect of the Russian language.

Q. What do you understand by the expression "Ruthenian"? *A.* It is a German word which was first used in the 18th century and means "Red Russians."

Q. What is the root meaning of the word? *A.* German (Ruth) in German is "red."

Q. What expression do the Russians themselves apply to distinguish themselves? *A.* In Galicia they call themselves "Galicians"—"Rusyn."

Q. The second part of that people called German about in Bukowina ? *A.* I cannot tell how. The Galicians are by the Germans called " Ruthenish."

Q. What is the meaning of these two expressions " Rusky " or " Rusyn " ? *A.* These words mean light coloured or blonde men.

Q. How do these people speak of themselves when they speak of their own nationality ? *A.* As Russians.

Q. How do Bukowinians speak of themselves ? *A.* The same as Russians.

Q. What word do they use ? *A.* They call themselves " Rusky "—books, letters and churches and everything, it is " Rusky."

Q. In connection with your education as a priest, did you study history of your Church ? *A.* Yes.

Q. You received your education in Russia ? *A.* Yes.

Q. Did you there learn anything of this Uniate Church ? *A.* Yes.

Q. By what Church is that known in Russia ? *A.* As Greek Uniate or Uniate.

Q. Has it any other name ? *A.* No.

Q. Did you ever live in Galicia ? *A.* No, I never lived in Galicia.

Q. Did you know anything of these Uniates from Galicia before coming to this country ? *A.* Yes.

Q. Will you state what you know of them ? *A.* They came from Galicia. Yes, I knew a number of them who came from Galicia to Kiev where we have a monastery, and they came there to worship.

Q. These Uniates worship there, how is that ? *A.* Because they are only, as far as I understand, nominally Uniates, but they really feel at heart Orthodox, as I understand.

Q. You say these people came there, why did they come there ? *A.* Because there were some relics there of saints whom they recognised and there was a time when we were of one faith and religion.

Q. Did these people come there to stay ? *A.* They were pilgrims from Galicia, some were living there at Kiev.

Q. Now you say they worshipped there, how do you know ? *A.* Because I, myself, witnessed them when they took communion there.

Q. Coming back to this country and these people, what do you find concerning their connection with the Uniates—churches—what have you found in connection with their faith ? *A.* I met different kinds of Galicians, different faiths, some of one—Roman Catholics—some of them recognised me as their priest and some of them about the Edna settlement. In the meeting I understood that they, the people which met in Fedir Melnyk's house, I understood were Orthodox—at the first meeting—that they belonged to the Orthodox Russo-Greek Church, their faith and mine was the same when they explained it.

Q. You say you called them Uniates ? *A.* I said, you are Uniates. I called them Uniates because I was informed in that portion some were Uniates, some Roman Catholics, and some belonged to my Church, and I called them Uniates or Roman Catholics. They said, " No " ; they asked me to explain what I meant by Uniates and what by Roman Catholics—what I meant.

Q. Well, did you explain ? *A.* I explained.

Q. What did they say to that ? *A.* They explained to me that they are not,

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they have nothing to do with the supremacy of the Pope or Bishop of the Roman Catholic Church, so that they are, as I understood, Independents.

Q. What did they tell you? *A.* I learned from them that they did not recognise the authority or supremacy of the Pope, they all were sort of Independents; they asked me what I was, when I explained that I was Orthodox Greek Catholic, I explained why, they said, "Well, we believe the same."

Q. Well, did they understand what "Uniate" meant? *A.* Yes, I explained.

Q. Did they understand before you explained? *A.* They asked me what I meant.

Q. Regarding the Uniate Church, you heard what was said by the Rev. Father Zoldac, re calendar of saints, what have you to say to this? *A.* I will say that we have many saints, which are not recognised by the Roman Catholics and Schismatics. In the calendar of our National Russian Church, there are many saints not recognised by the Roman Catholic Church.

Q. Compare the calendar of saints of the Uniate Church and the Russian Church, that is the Orthodox Church? *A.* It was the same way. The Uniate Church up to 1850 was the same as that of the Russian National Church.

Q. Is there any change since then? *A.* Since then there are new feast days.

Q. Is there any difference between the Uniate calendar of saints and the Roman Catholic? *A.* A great difference between the Uniate Church and the Roman Catholics, nothing the same. The only saints common to both those are of the first nine centuries.

Q. Will you state what difference? *A.* There are saints which in the Roman Catholic Church we do not recognise and the saints in our Church after that date the Roman Catholic Church does not recognise. Those saints canonised by the Roman Catholics after the ninth century are not in the calendar. The Uniate calendar was the same as that of the Orthodox-Russo-Greek Church up to the year 1850.

Q. Are you familiar with the Uniate calendar, have you read it? *A.* Yes.

Q. Does the feast "Corpus Christi" appear in that calendar? *A.* No.

Q. Are you familiar with the rule of service in the Uniate Church? *A.* Yes.

Q. Is the ceremony of the Benediction of the Blessed Sacrament in that rule of service, are you familiar with the methods of canonisation in the Roman Catholic and Greek Churches? *A.* Yes, so far as a matter of study.

Q. What is the rule in your own Church? *A.* In my own it is, firstly, if a man dies and he was a very holy man, after that the people all the time ask God to forgive them as a result of the saint's prayers to God,—the people ask the Church authorities to apply to the ruler in the country for permission to take up the body and, if his body is not corrupt, after that the people ask the Church to canonise him as a saint. The opinion is not the same in the Roman Catholic Church.

Q. Will you explain to what body the expression "Greek Catholic" belongs, that is what Church? What Churches are included in the expression "Eastern Church?" *A.* The Church of Russia in Greece; the Greek Church in Turkey and the Alexandrian in Egypt, and the Jerusalem Church, Antioch, Bulgarian and Roumanian and some others.

Q. Are these all called Greek Catholic? *A.* Called Greek Catholic. All

Churches call themselves Eastern Catholics or Eastern Orthodox Catholics or just Orthodox.

Q. Does the name apply to all? *A.* Those call themselves Greek, who are from or connected with the Greek Churches.

Q. What Churches are these? *A.* The Russian Church and the Roumanian Church and Servian, Bulgarian Greece.

Q. It is said by Father Zoldac there is only one Orthodox Church building in Galicia? *A.* No, I know two.

[Mr. MacDonald objects to his statement as to Orthodox Greek Church buildings in Galicia on the ground that he has no knowledge on the subject, because he has already stated he has never been in Galicia.

Judge Scott: I receive the evidence subject to the objection.]

A. I read in Galician papers about such a church being consecrated in Lemburg.

Q. Do you know anything about the ritual of the service in the Uniate Church? *A.* Yes.

Q. How does it compare with that of your Church? *A.* The Uniates use in their Church in Galicia, as far as I know, two kinds of a book; one is printed in Galicia and one book is bought in Russia.

Q. Have you seen any? *A.* I saw from one man, a book which he showed me—a church book—a book printed in Russia.

Q. Have you any of these books? *A.* Yes, I have one—one printed in Greece. The book I now produce is a ritual rule of service of the Uniate Church in Galicia. It is entirely rule of church songs and especially rule of reading in church, according to that which is in church books.

Q. Is there anything there which shows the name of the Church for which it is intended? *A.* No.

Q. How do you know it is for the Uniate Church? *A.* It is printed in Galicia. I produce a book of the rule of service and ceremony of the Uniate Church, which was published in Peremyzl, which is the residence of the bishop of one of the Sees under the Greek Catholic or Uniate Archbishop of Lemberg. I also produce a prayer book which is published in the same place.

Q. Will you look at the book and see if it says in which Church it is to be used? *A.* Yes, this book is printed with the blessing of the Most Reverend Michial Levitzski, Metropolitan of Galicia, and the Most Rev. Iwan Snequorski, Bishop of Peremyzl.

Q. Do you find anything further there to indicate the name of the Church for which it is intended? *A.* No.

Q. In your examination of these books of that Uniate Church, do you find anywhere the name "Greek Catholic" stated? *A.* No.

Q. You say you have other books? *A.* I have another book printed in Galicia—the same book. I now produce a prayer book of the Galician Church published in Lemberg, 1893; it is a prayer book for the people.

Q. Is it the same prayer book as produced formerly? *A.* About; some prayers are the same.

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Q. What difference is there, does it purport to be the same book ? *A.* It is printed specially for the people.

Q. What difference do you find ? Are all the prayers in that, or is it an abbreviation ? *A.* Part alike and part not alike. It is a prayer book but changed. The first book I produced was published in 1852, the second in 1847 and the third in 1893.

Q. Are they all different ? *A.* The first is simply a book of rule of service and ceremony ; the second and third are books of prayer. The prayer book published in 1893 does not contain the prayer for the Russian Emperor, referred to by Father Zoldac in his evidence ; that prayer is contained in the edition of 1847. The book published in 1893 is published especially for the laity.

Q. Are there any other changes that you know of ? *A.* Yes.

Q. There are other changes ? *A.* Yes.

Q. Will you state what they are ? *A.* That in the former books the service is exactly the same and in recent books changes are being made to render the service more to conform with the Roman Catholic religion. We do not admit it.

Q. What difference between the old and new books ? *A.* It is different in the calendar.

Q. Well, can you put in a sentence what difference you find ? *A.* I find a new doctrine in this new prayer book.

Q. To what effect ? *A.* It is all read, this is changed and this is not different, and Immaculate Conception is in the new book. The book I produce, which is published in 1847, is identically the same ritual as used in my Church, except the order of the prayers may not have been the same and that the words, " And from the Son " in the Creed are contained in it. The book I produce which was published in 1893 contains new doctrines, one of which is that of the Immaculate Conception, according to the doctrine of the Filioque.

Q. Who is head of the Orthodox Church in Bukowina ? *A.* Metropole Cyerowycz in Bukowina.

Q. What nationality is he ? *A.* Russian.

Q. I think I understood Father Zoldac he is under the Patriarch of Constantinople ; is there any connection between the two Churches, that is the Patriarch of Constantinople and the Russo-Orthodox Church ? *A.* They are separate Churches and independent.

Q. What is the head of your Church—spiritual head ? *A.* Jesus Christ. The temporal head is the Holy Synod—the Russian Church is under the Holy Synod.

Q. Did you have any conversation with Father Zacklynski re his Church ? *A.* Yes, I have.

Q. What Church did he claim to be ? *A.* He said he left his charge and had no congregation, that he was going to take charge of a new congregation at Lethbridge.

Q. When did he tell you that ? *A.* When he visited me at my house here in Edmonton.

Q. Was it before you were asked to become priest of this congregation or after ? *A.* It was on Sunday they asked me to be priest and I went to Edmonton and two or three days after visited me Father Zacklynski.

Q. They first asked you on Sunday, you returned, and two or three days after Father Zacklynski visited you? *A.* Yes.

Q. Now when did you learn that you had been sued in this matter? *A.* I cannot tell the date.

Q. The writ was issued on the 8th April, 1901; where were you on 8th April, 1901? *A.* I was at Wostok.

Q. When did you learn that the writ had been issued against you? *A.* It was when I was called for examination.

Q. Was it in April? *A.* About June or July—8th June examination for discovery. I learned the claim—it was shortly before I was examined on the 8th June last that I heard a writ had been issued against me.

Q. Have you looked up a calendar of 1901 since this morning. How do you fix this time? *A.* Our Easter was the 5th April—on 17th April according to our calendar.

Q. Can you fix the dates when you ministered in the church in question? Will you look at this calendar and state? *A.* First service was on 2nd March according to Gregorian calendar.

Q. Will you give the dates of your first service in the church in question? *A.* Upon referring to the calendar I find the first service was on the 2nd March according to the Gregorian calendar and the second service was on the following day.

Q. I think I heard you say you held service again in the church? *A.* I held another service on the 8th April, according to the same calendar, which was the last service I held in that church.

Cross-examination.

Cross-examined by Mr. MacDonald:

Q. You were ordained a priest in America? *A.* In America.

Q. By your Bishop Tikhon? *A.* By Bishop Nicolas.

Q. You were served with a subpœna on behalf of the Plaintiff asking you to show in Court a certificate of ordination of deacon as a priest? *A.* I sent it to Russia.

Q. Do you remember being asked on your examination for discovery in the month of June last for two certificates? *A.* Yes, I remember.

Q. Do you remember that you stated you had them at home in Wostok? *A.* Yes.

Q. And that whenever they might be required in progress of the suit you would be glad to produce them, you said so? *A.* Yes.

Q. You know perfectly well my object in asking to look at those certificates, did you not? Did I not give you to understand why I wanted to see the certificates was because we contend the word "Catholic" was not used in the name of your Church and the word "Catholic" would not appear in your certificate? *A.* I do not remember.

Q. You knew at all events there is a contest as to whether the word "Catholic" was used in your Church? *A.* I remember.

Q. And that the contest was not as to what your Church described as Catholic, but "Catholic" in the name? *A.* Only one name has my Church.

Q. I made you understand that my contention was this, that, while the

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word "Catholic" might be used in describing your Church, that it was not a portion in the name of your Church; you understood and you know what I contend for? Now will you tell what is the name of the Church in which you were ordained as priest, the official name? *A.* The Orthodox Russo-Greek Catholic Church.

Q. Will you swear that the official name of your Church is not, sir, Russian Orthodox Church? *A.* Yes.

Q. What is the official name of your Church? *A.* The official name of my Church is "Orthodox Russo-Greek Catholic Church."

Q. Will you show me any book, any ritual book, or any document printed or written in which that official name appears? *A.* Yes, sir, I will. I produce a periodical called "Russo-Greek American Messenger," printed at New York, 14th April, 1901, in which appears set out a decree of the Holy Synod of Russia.

Q. Now do you accept the English translation given here as a correct one? *A.* This paper is the organ of my Church in America.

Q. You say this decree is the same name but in a different order. The name given in heading of the decree is "The Orthodox Greko-Russian Church." On page 31 I find the words "All dogmas of the Orthodox Church"—in a line of that decree appear the words "All dogmas of the Orthodox Church?" *A.* Yes.

Q. Can you show me a breviary or prayer book of your Church in which the name of your Church is given? *A.* My Church has several names. I can ——

Q. I asked you to show me now a book in which the particular ecclesiastical body is mentioned; in which the title of the Church to which you belong, under whose order you are, and governed by the Holy Synod of Russia, as you are; can you or can you not? *A.* No sir.

Q. You showed me several references in the body of the prayer book and none correspond?

Mr. Short: He has no book which gives the name of his Church.

Mr. MacDonald: *Q.* Now you produced at the examination before that Greek missal book; will you let me see it now that we can find it?

[Book produced.]

Q. Is the name of the Church mentioned at all—can you show me? On the examination you referred me to pages on which the different names of the Church were given. On your examination for discovery you referred to page 256 of your missal and you gave this line, "Do you wish to unite with." On that page there appear these words, "Be you wish to unite with the Orthodox Greek Russian Church." On a preceding page the following words appear, "Do you wish to be and live in union with the Orthodox Catholic Faith." On the last line of that same page appear these words, "Thy servant who is worthy to come to the Holy Orthodox Church." Now is it or is it not true that in respect of your Church the word "Orthodox" is never left out? You contend to belong to the Eastern Catholic Church. In the name of the Church governed by the Holy Synod of Russia, is the word "Orthodox" ever left out? *A.* Very often.

Q. Will you show me one instance in which the word "Orthodox" is left out? In any of the long compound names you have given have you ever left out the word "Orthodox"? *A.* It is named quite often in the Russian Church.

Q. Now is it not a fact that it was only during the last quarter century or so the word "Catholic" became used in the name of your Church? *A.* It is not true.

Q. Is there not a distinction drawn between "Catholic" and the Russian word "Capholic"? Which is about the same? Did you recognise a distinction between "Catholic" and "Capholic"? Our word "Catholic" is a Greek word, but do you use a term "Capholic"? Do you recognise a difference between those two terms, "Catholic" and "Capholic"? *A.* Yes, I recognise a difference.

Q. Now the word "Catholic" is Greek and the word "Capholic" is Greek, which is the original Greek word? Will you answer me? *A.* The Greek letter in the word "cath"—"th"—"tha," is a Greek word.

Q. Where did you get your "Capholic"? *A.* Russian. You use the word "Catholic"; we use the word "sllnisk," which is the Russian equivalent of "Catholic" or "Universal."

Q. Now where do you get your word "Capholic."? *A.* We have it from the Greek—the word is Greek.

Q. Do you or do you not see this distinction is "Capholic" or the Greek equivalent and that the word "Catholic" is applied by you to those of the Roman Catholics, so speaking of the Roman Catholics as we speak of the Protestants. *A.* Our Church refers to Roman Catholics—Church—as Catholic in the same way that Protestants refer to it.

Q. If you are told that a man is a Catholic, what do you understand? *A.* He is a Roman Catholic.

Q. I will ask you again if it is not true that your Church uses the word "Catholic" as meaning Roman Catholic and Roman Catholic alone? *A.* My Church never used that word when speaking about Roman Catholics.

Q. Did you ever know the Church to which you belong called simply the "Greek Catholic Church," without the word "Orthodox" being used too? *A.* Yes, sometimes.

Q. What? *A.* I can use it myself any time.

Q. Well, tell me what Church was ever described in its own service or in any official document as the "Greek Catholic Church" leaving out the word "Orthodox" in Russia or Turkey? *A.* I cannot tell.

Q. Did you ever see your Church described as the "Greek Catholic Church," being in before or after? *A.* Yes.

Q. Did you ever hear of any Church governed by the Pope being Orthodox? *A.* They cannot.

Q. Did you not swear that any Church under the supremacy of the Pope used the word "Orthodox"? I asked you if you did not swear that any Church used the word "Orthodox." Do you swear or do you not swear that any Church under the supremacy of the Pope ever used the word "Orthodox"? *A.* By the Uniates, many of the Uniates used the word.

Q. Did you not state on the examination for discovery that you never heard of the word "Orthodox" or "Pravoslavni" being used in the name of the Uniate Church? *A.* Yes, I did so state, and up to that time I never heard it, but since that time I heard that Father Zoldac teaches them they are "Orthodox."

Q. Now you have never been in Galicia and you never met with a Uniate in your life until you came here? *A.* I have met Uniates, but I never lived among them or became acquainted with them as a body.

Q. You know nothing about the Uniate Church in Galicia except what you read and have been told? *A.* No.

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Q. Is it not a fact that in Russian orders, especially among the Little Russians, there is still a small remnant of Uniates and that persecution of these Uniates is going on and that only a few months ago a Uniate bishop was banished to Siberia for life as a punishment for adhering to the Uniate faith ? *A.* No ; there are no Uniates in Russia.

Q. Your Governor took good care there would be none ? *A.* No.

Q. Well, you say that during the last fifty years these have been stamped out ? *A.* Never.

Q. Do you mean to deny that the Russian Orthodox Church has been stamping out any other possible religion in Russia ? *A.* It is not so.

Q. Then according to you the only Uniates are in Galicia ? Will you tell me how long there was a Uniate bishop in Galicia ? *A.* Twenty-five years. There were Uniates, they all came over to the Holy Orthodox Russo-Greek Church, all of them came with love and not with threatenings of Siberia.

Q. Now when you got to Wostok, you found a large handsome church near Nymyriski's ? *A.* Yes.

Q. You will agree that the church at Edna was standing there complete ? *A.* No.

Q. I mean that when you were there a few days you found your Church—the Orthodox—was in possession of building. You commenced a Church in your house ? You were made aware shortly after getting there that there was another Church at Star which was presided over by Father Zacklynski ? *A.* Yes.

Q. I mean, did you not perfectly well know that Father Zacklynski was a Greek Catholic priest, not under your Bishop Tikhon ? *A.* No.

Q. Do you mean to say that you came to America without knowing Father Zacklynski ? *A.* When I came by order of my bishop, I heard there was Father Zacklynski which was now on the way to take my benediction.

Q. You have seen your bishop since—do you expect us to believe—you say your bishop told you he was going to—how long were you at Wostok before you found out Father Zacklynski was not a member of your Church ? *A.* It was after Father Zacklynski came back from Lethbridge.

Q. You came here in the month of November. How long were you at Wostok before you found out Father Zacklynski was not under the control of your bishop and a priest of your Church and under your bishop ? *A.* Until I met him.

Q. How long was that ? *A.* I met him in about three months.

Q. In other words, although you were only six miles from this church, you never met him until he had returned from Lethbridge ? *A.* I never learned until I met him in Fedir Melnyk's house three months after my arrival that Father Zacklynski was not under my bishop, I knew he was not a priest.

Q. How long on your oath you knew within 24 hours after you reached there that Father Zacklynski was a Uniate ? Did you not hear from Galicia ? *A.* I said I heard from Father Zacklynski.

Q. When did you first hear from anybody or any source that Father Zacklynski was a Uniate ? *A.* I heard that Father Zacklynski was a Uniate.

Q. When ? *A.* When I came to Seattle, before coming to the North-West Territories, I heard that he was a Uniate.

Q. And you also heard that he was coming over to your bishop ? *A.* Yes.

Q. And yet for three months after you came here you never tried to find out if Father Zacklynski did come over? *A.* I had no time.

Q. You did not go to see him? Although you thought he was a proselyte and although you heard he was coming over to your Church, do you expect us to believe that within 24 hours you did not know that Father Zacklynski was an Uniate priest of the Greek Catholic Church and had a congregation? *A.* I heard there was a priest, a Roman Catholic.

Q. And you took no interest? *A.* I had no time, I asked who he was and some one said who he was.

Q. You came in November? *A.* Yes.

Q. And your first interview with the kickers at Fedir Melnyk's house when they asked you to become their priest was two months after you say you had no time? Do you admit that for three months you did not find out that he was a Uniate? *A.* No.

Q. I asked you how long after you got to Wostok was it that you ascertained and learned that Father Zacklynski and his congregation were Uniates? *A.* I heard that there were a priest and some Uniates.

Q. How long? You heard there was an Uniate congregation, and church and priest? *A.* I heard that there was Uniate church and priest.

Q. You did not expect that there were two or three different sects under the same priest? *A.* I did not expect it.

Q. And under one priest there were more than one sect? *A.* I did expect it in this case.

Q. Did you ever have any doubt in your mind up to the time that you were asked to take charge of that Congregation that that Congregation as a whole and its priest were Uniates? Up to the time that you were invited to become priest of that Congregation had you any doubt that that Congregation and the priest were Uniates? *A.* No.

Q. Was not the date of the meeting in Fedir Melnyk's house the 27th January? *A.* I cannot remember. I cannot remember the date without reference to my books.

Q. Those present at the first meeting at Fedir Melnyk's house were Mike Polfushie, Mike Melnyk, Iwan Pylypiw, Fedir Melnyk, Wasyl Feniak, Petro Melnyk, M. Teczkowsky? *A.* Yes—Who I have named, except the last two, agreed to receive me as their priest.

Q. Did not Petro Melnyk and M. Teczkowsky go as far as to say that they would not receive you as their priest as you were Orthodox and Greek Catholic? You wish us now to understand that you explained to these people that in order to become members of your Church they would have to renounce their Roman Catholic doctrine and they in turn explained to you that they did not hold to such doctrine? *A.* Yes.

Q. And in consequence of that you received them into your Church without making them renounce? *A.* Yes.

Mr. MacDonald, having read several portions of the Witness's deposition to him, asked Witness:

Q. Will you still persist in saying you did not formally make these people before the whole congregation renounce their Roman Catholic religion? *A.* I

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speak English, but I do not understand it very well. I do not understand the meaning of the word "renounce"; explain it to me. What I understand was that a man came to me and before the whole congregation said I believe so and so, but I knew before that he believed a doctrine different from that of my Church. I took that to be renouncing their former religion.

Q. Did I not explain to you the meaning of the word "renounce" with reference to the German word "Absagen," that is one of the German equivalents. "To disclaim belief in doctrine." That being necessary that neither of the interpreters could not understand the English word "renounce"? *A.* If a man come to me and tell me he believes in my doctrine I accept it that he disclaims all other different doctrines.

Q. What do you mean by this statement in your examination for discovery: "The Trustees and some others had on the day before renounced their Roman Catholic doctrines in my church at Wostok before the whole congregation." What do you mean by the last four words? *A.* The persons named came to the front of the church and were openly examined by me as to the doctrines.

Q. You stated in your former examination that on the night of February 2nd a man named Nymyrski and the wife of Wasyl Feniak and W. Pollushie also renounced at Star. Did you not on that occasion have these two women come forward to the front of the church and say words to this effect: "We renounce or we "give up or we put aside or abandon the doctrines which we formerly held in the "Greek Catholic Uniate Church"? *A.* No.

Q. And did you not hold forth to them the Cross to kiss and did they not kiss it as a token of their faith? *A.* No, before I speak religion to a man I must understand that he has renounced his former religion and that he understands my religion. I explain to him the difference between his former religion and mine, and after that, if he asks me to join him to my Church, I bring him before the whole congregation and ask him specially to explain what he believes, and after that I ask him to swear that what he has said is true and he kisses the Cross, and after that I give him communion.

Q. You have a book in which appears the articles of your creed and you read one to him and he is supposed to answer, "I so believe and I so confess"? *A.* I read these articles to him one by one and he is supposed to answer, "And I so confess."

Q. Was it before or at the time of this meeting at Melnyk's house these people told you that their priest Father Zacklynski had gone away and left them and they wanted you to be their priest? Was it on the same day or an earlier hour? *A.* Yes.

Q. You stated at the meeting they did not ask you to be their priest? *A.* They asked me ——

Q. How many people were there at the meeting? *A.* I do not know.

Q. Were there more than seven people there? *A.* I cannot remember.

Q. Before leaving that meeting you asked that if they would come over to your Church, renounce their wrongful doctrines, that you would become their priest, did you not? *A.* Yes; if they would accept my doctrines, I would be their priest.

Q. At that time you were made aware that the title to the church was held

by Pollushie, Pylypiw and Mike Melnyk and they showed it to you ? *A.* I cannot remember.

Q. The three Defendants told you at that time they had the certificate of title for the property ? *A.* Yes.

Q. Were you not at that time well aware that in the United States the law was that a church property could only be transferred to another body of different faith with the unanimous consent of the whole congregation ? *A.* Yes, I did.

Q. Did you not explain to the people at this meeting that such was the law ? *A.* It was not explained. They asked me for something and I answered to them. If the law is the same in the United States ——

Q. You mean to say that you did not explain to them what the law was in the States ? *A.* Yes, I told them, because in answer to some questions asked me I told them what the law on the subject was in the United States.

Q. Did not Pylypiw then say to you, " If we go over, the whole Congregation " will go with us ? " *A.* Yes.

Q. In honest belief in taking charge of this Congregation you were doing so at the wish of the whole Congregation ? *A.* Yes.

Q. Now when did you first find out that a good many of the Congregation were opposed to your coming ? *A.* I cannot remember the exact date.

Q. At your first service in the church on February 2nd there were about 40 souls present ? *A.* Yes.

Q. You knew that there were more than 40, men, women and children, in the Congregation ? *A.* Yes.

Q. Did not the fact that the attendance was so small lead you to think that it was doubtful, that the whole Congregation was divided ? *A.* It was evening service so that I did not expect a large congregation.

Q. Now did you hear that about 10th February, that is eight days after your first service, Father Zacklynski wanted to obtain entrance into the church to marry a daughter of Iwan Danczuk and that the Trustees, Pylypiw, Pollushie and Melnyk, at first refused to let him in and finally unlocked the door and let him in ? *A.* I heard that later.

Q. Did you not also hear that on that day Father Zacklynski wished to have the public meeting of the Congregation for the purpose of electing Trustees and that Pollushie, Pylypiw and Mike Melnyk refused to let them stay and turned them out and locked the door and took the key ? *A.* I understood that later.

Q. That ought to have been a very fair intimation to you that Father Zacklynski had not left the Congregation and that there was a difference of opinion in the Congregation calling you ? *A.* Yes, it was.

Q. Now notwithstanding that you heard this you went there to hold service again on the 22nd February and you found the door barred ? *A.* Yes, but I am not quite certain of the exact date.

Q. The door was fastened in some way which led you to believe that the other party were trying to keep you out of the church ? *A.* No, I did not believe that, but I believed that some one was going to make trouble and I did not go into the church.

Q. You were in town, Father Korchinsky—in Edmonton here—on the 14th day of March, of that winter—1901 ? *A.* Yes.

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Q. Do you remember being in Edmonton one day during that winter and were handed a letter by Iwan Melnyk ? *A.* Yes.

Q. There was only one occasion on which Iwan Melnyk gave you a letter ? *A.* Yes.

Q. You can read English fairly well ? *A.* Yes.

Q. Have you that letter which was then delivered to you ? *A.* I have it, but not here.

Q. But you admit getting a letter from him ? *A.* Yes.

Q. That letter appeared to be signed by me, did it not ? *A.* Yes.

[Mr. Short objects to the contents of this letter.

Mr. MacDonald states that he is prepared to prove original letter at a later stage of his case but, owing to the fact of the present Witness being called before the conclusion of this case he finds it necessary to cross-examine him as to the contents of the letter and suggests that he should be at liberty to cross-examine the Witness as to those contents, subject to that cross-examination being struck out in case he should fail to prove the letter.

Mr. Short : I admit the evidence upon these terms.]

Q. Did you ever get for them a letter from me about the affairs of the Church ? *A.* No.

Q. Look at the letter I now show you and tell me whether that is not a copy of that letter, does it not appear to you a copy ? *A.* No, I cannot tell.

(Letter is marked X 2 for identification.)

[Mr. Short admits that, subject to the proof being hereafter given of the letter, that the copy now produced is substantially a copy.]

Q. Now Father Korchinsky, on getting this letter you went either that day or the next day to see Mr. Short, did you not ? *A.* I cannot remember when I went to Mr. Short, it seems to me when I got that letter ——

Q. Were Pollushie, Pylypiw and Mike Melnyk in town with you at the time you got that letter ? *A.* Yes.

Q. Were you not in town for the purpose of consulting a lawyer as to holding possession of this church ? *A.* No, I did not see Mr. Short at that time.

Q. Will you tell me, sir, that you did not, on the afternoon of the date of the letter or on the following morning, instruct Short and Cross what to say in answer to that letter ? *A.* No, but I did visit him the next morning.

Q. When you went to Short and Cross you gave them instructions about this matter ? *A.* Yes.

Q. You fully understood from my letter that there was a fight on between two factions of this Church ? *A.* Yes.

Q. Did you not understand further that you were one of the persons against whom the action was to be brought unless the certificate of title and key were given up ? *A.* Yes.

Q. You have pleaded in your amended defence as follows (reads paragraph of the amended statement of defence). Do you understand that you have so pleaded ? *A.* Yes.

Q. Your Russian Easter Sunday was on the 14th April, 1901, according to the Gregorian calendar ? *A.* Yes.

Q. You went to the church in question on that day to hold service, did you not ? *A.* Yes.

Q. And before going there you applied to the officer commanding the N.W.M.P. for an escort to protect you, did you not ? *A.* No, but I heard somebody intended to disturb my service on the Easter Day ; for that reason I applied to the police to advise me how to protect myself.

Q. Now as a matter of fact a corporal and two men went out there, did they not ? *A.* Yes, I met them there.

Q. Had you already held your Easter service at Wostok Church ? *A.* Yes.

Q. When you arrived at the church at Edna, was Father Zacklynski there with a large number of his supporters ? *A.* Yes.

Q. As a matter of fact neither you nor Father Zacklynski and his followers got entrance into the church on that occasion ? *A.* No.

Q. Did not the people with Father Zacklynski largely outnumber the people with you, probably five or six to one ? *A.* No, I had about half of the Congregation.

Q. A lot of your people from Wostok were with you ? *A.* Yes.

Q. Were they not Bukowinians ? *A.* No ; there were no Bukowinians.

Q. And you think you had about half of the crowd with you there ? *A.* Yes, I think so.

Q. What proportion of the people you had with you belonged formerly to Father Zacklynski's Church ? Are you prepared to say that there were more than ten of your crowd formerly members of Father Zacklynski's Congregation with you ? *A.* Yes, there were more.

Q. Well, were there more than twelve ? *A.* There were more, I cannot say.

Q. Will you undertake to say that there were more than 20 at the extreme outside ? *A.* I think there were more.

Q. Can you count up who they were ? *A.* There were five from the house of Pollushie, I think six from the house of Pylypiw, three from the house of Feniak, five from the house of F. Melnyk, four from the house of Nicola Melnyk, four from the house of Cyrczik, six from the house of D. Maceborski, five or six from Dunaski.

Q. Can you remember any more ? *A.* No, I cannot remember. I know there were, but I cannot remember.

Q. That was nine heads of families you have mentioned. Were there any others ? *A.* Yes, there were others but I cannot remember them.

Q. Did you not have a large number of people belonging to your Wostok congregation with you ? *A.* No ; there were only a few of them.

Q. Who first tried to get into the church building ? *A.* We both agreed with the police not to try to get in.

Q. Was it not a fact that you and your followers moved towards the door of the church and that Father Zacklynski's followers obstructed the way shouting words to the effect, " Down with the schismatics," and that after that the agreement was come to not to enter the church by either party ? *A.* No ; it is not true ; that did not happen. There was no disturbance until after we had the agreement.

Q. Do you remember the police taking hold of some person and holding them

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at the time you had the disturbance ? *A.* Yes ; after the agreement, the police did take hold of several persons, they took hold of two Polish women.

Q. Did the police take hold of Andreas Paisz ? *A.* No ; I did not see them.

Q. Did you see them lay hands on anyone else ? *A.* Yes ; a Roman Catholic Polish woman.

Q. What was she doing there, if she was a Roman Catholic ? *A.* Three-quarters of the crowd were Roman Catholics.

Q. Will you tell me a few of the Roman Catholics ? Is there a single person of Little Russian nationality* is a Roman Catholic in that vicinity—that is, not a Uniate Greek Catholic ? *A.* There are many.

Q. Tell me one ? *A.* Andreas Paisz is one ; I could get you a list of all.

Q. I mean Roman Catholics of the Latin rite ? *A.* I could tell you one, Gryn —Semyniuk.

Q. You say they are Catholics of the Roman rite ? *A.* Yes.

Q. Why do you say so ? *A.* They all the time keep feasts with the Roman Catholics. They take communion and confession from the Roman Catholic priest, and Semyniuk told me he was a Roman Catholic.

Q. You have heard it stated by Father Zoldac and Bishop Legal that Greek Catholics, when a priest of their own rite is not available, are permitted to attend Mass and accept the sacrament according to the Latin rite ? *A.* Yes.

Q. Have you any reason for contradicting that statement ? *A.* I have not. I believe that to be true.

Q. Now you have stated that certain persons whom you mention are Roman Catholics and you state they were so because they had gone to the Roman Catholic service and received the sacrament from the Roman Catholic priest. Is that your only reason for believing it so ? *A.* I heard from them that in Galicia there is a village where there is a church, a Russian church, and sometimes a priest of the Roman Catholic rite comes and tries to get them to be Roman Catholics, and build a chapel, and then a church, and when he has enough congregation, then after that they are Roman Catholics of the Roman rite.

Q. Did you hear Father Zoldac and Bishop Legal swear, as a head of the Roman Catholic Church, that neither a priest or bishop of the Latin rite was allowed to interfere with Catholics of the Greek rite and Catholics of the Greek rite were not allowed to interfere with the Latin rite ; did you hear them say that ? *A.* I heard them say it and I read of it.

Q. You prefer to believe the statements made to you by some illiterate people rather than the sworn statement of these two ecclesiastics ? *A.* Yes.

Q. Was not every Pole in Galicia a Roman Catholic of the Roman rite ? Is it not a fact that the Polish nation are Roman Catholics and that Russian residents are Greek, either Catholic or Orthodox as the case may be ? *A.* Yes ; that is, the Orthodox are Greek Catholics as I understand the term.

Q. Will you deny the fact that the Poles as a nation are Roman Catholics and that the Russians in Galicia are Greek Catholics ? Can you name a single place in Galicia where there is a whole congregation in the Roman rite consisting of Little Russians ? *A.* I cannot name one, but I will ascertain and send in the name.

Q. Which one of these people told you this ? *A.* Semyniuk.

Q. Do you know where he comes from in Galicia ? Do you know anything about him ? *A.* No.

Sic

Q. Did he not come here last year ? *A.* I did not know anything about him.

Q. You do not know anything about Semyniuk's past history, or not, whether he is truthful or not ? *A.* I do not. Referring to the book I now have, a historical sketch published in Vienna ——

Q. Have you ever seen the statement made in any other book other than this, that there are congregations of people of the Roman rite in Galicia, except this man Semyniuk, and this book ? *A.* Yes, in church history, I have read of it.

Q. Do you still say that three-quarters of the people were Roman Catholics and not Uniates ? *A.* Yes, not Uniates.

Q. But three-quarters of the crowd were Roman Catholics and not Uniates ? Was Andreas Paisz a Roman Catholic and not a Uniate ? *A.* I know.

Q. Do you know a man named Wazhnoivtz ? *A.* Yes. It seems to me that he is a Roman Catholic.

Q. We are told that this man Wazhnoivtz comes from the very same village in Galicia from which Pollushie, Pylypiw and Feniak came and they worshipped side by side in the same church and under the same priest, and you say he is Roman Catholic ? *A.* I met a man of that name there and he told me he was a Roman Catholic of the Polish rite, which I understood to mean Roman rite. Wasyl Hrniw is a Roman Catholic ; Michal Prodruski, his wife or some of his relations is a Roman Catholic. I have heard that Nicola Stellmach's wife is a Catholic.

Q. Do you mean to say that three-quarters of the people were Roman Catholics ? *A.* Were Russians ? No ; Poles.

Q. Is it not a fact that the Poles keep the Russian Easter ? *A.* No.

Q. Still you say that a large number of Poles, amounting to three-quarters of the crowd, accompanied Father Zacklynski to take part in the quarrel on the Russian Easter ? *A.* Yes, about three-quarters.

Q. You had about how many people with you ? *A.* I cannot tell.

Q. About 75, Father Zacklynski had no more people than you had ? *A.* Probably he had more, I said his crowd was large.

Q. You said the crowd was about equal. Did not Father Zacklynski's crowd outnumber yours ? *A.* Yes.

Q. Very much ? *A.* Not very much.

Q. Did you have 100 there ? *A.* May be.

Q. Three-quarters being Catholics, can you find 75 Roman Catholics in that neighbourhood there, enough to come to that church ? You know you could not ; there are only 72 Roman Catholics in the whole district and they are all Poles. Do you know a man named Alexis Drawsu ? In referring to the meeting at Fedir Melnyk's house, you remember Petro Melnyk ? There were some other people. Did Petro Melnyk on that occasion state to you that he would not go to your Church and that, if the rest did, there would be a lawsuit ? *A.* I answered that question once.

Q. Did Iwan Melnyk agree ? *A.* He did not say anything of that kind.

Q. You afterwards held service there in the open air and Father Zacklynski did the same ? *A.* Yes.

Q. At the same time ? *A.* I said we agreed, Father Zacklynski to hold service near the church and after I held service, and Father Zacklynski finished his. After that I started. I said to the police if he would protect me. We started, but,

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when we started, Father Zacklynski came and advised the people to take me out. I said, "You finished your part; let us have the service." After that a Polish woman was crying and disturbing the meeting and the police came and took her away.

Q. Was it a fact that you and Father Zacklynski both held service outside of the church? *A.* Yes.

Q. He first and you last? You then commenced to hold service but you could not finish, on account of the disturbance of one woman? *A.* I did not finish.

Q. You mentioned when I was reading over the list of names of the people in the Congregation, you mentioned that you had seen and spoken to them. Well, did you go to see these people? *A.* They visited me many times.

Q. You have made a practice, since you have been here, of visiting generally or talking in general to the Uniate people whom you met and trying to bring them over to your Church? *A.* Never.

Q. Did you request John Letawsky to leave the Greek Catholic Faith and come over to your Church? *A.* No, I explained to him the difference.

Q. Did you request his sister who is a domestic servant in this town? *A.* She came to me and I explained to her what she had to renounce. She confessed, but her brother forbade her to come.

Q. She came to you? *A.* Yes, she came to me and asked me to give her communion.

Q. Is it a fact that not only out at Star, but in the other settlements at Rabbit Hills, you held a meeting and received them into the Church? *A.* Never.

Q. Did you at Rabbit Hills hold a meeting of people who had to your knowledge been Uniates and received them formally in your Church? *A.* No.

Q. Now there is a Greek Catholic Uniate church at Rabbit Hills known as St. Mary's? *A.* I do not know.

Sic.

Q. You know there is such a church there, but you do know by what name it is called. And you know, Father Korchinsky, that Father Zacklynski was the priest of the Congregation, did you not? *A.* I do not know. Yes; I heard that they had asked him to be and were not satisfied with him.

Q. Did you hear that he had been the priest of that Congregation? *A.* I heard that he ministered to the Congregation, yes.

Q. Did you go up there in March, 1901? *A.* Yes.

Q. Do you know a man Workum? Did you know he was one of the Trustees of that Greek Catholic church? *A.* Yes, I knew.

Q. You knew another man called Iwan Borys? *A.* Yes, I know him.

Q. Now before you went out there in March, did you know Borys? *A.* Yes; I had met him.

Q. Did you on that occasion drive past Workum's farm and call in and take him to go to the house of Iwan Borys? *A.* I passed the house, but my man who was driving me went in.

Q. Did you ask him to go with you to the house of Iwan Borys? *A.* No.

Q. He went with you but you never asked him? *A.* Yes; he went and I never asked him.

Q. If he swears that you came and asked him to come to the house of Workum, he swears falsely? *A.* It is not true.

Q. Iwan Borys was also Uniate before that ? *A.* I do not know.

Q. You had heard that he was ? *A.* I had heard that he held to them, but he was not a member.

Q. There was an Orthodox Church in that settlement also. You were the priest in charge of that ? *A.* Yes.

Q. Had you heard that Father Zacklynski was the priest of that Church ; you said you had. You went to the house of Iwan Borys taking Workum with you and you met there a number of people who had been going to the Uniate Church ? *A.* I do not know for all the people, may be they were going or not.

Q. Now you do not know whether any of those people were Uniates or not ? *A.* I know that some of the people I met there were Uniates.

Q. And you addressed them on religious matters ; you, in the course of your address, said, you all know that none could be saved except by belonging to the Orthodox Church to which you belonged ? *A.* Yes ; to the Greek Orthodox Church.

Q. Now then, some of those who were Orthodox beforehand confessed ? *A.* Yes.

Q. Did you not then say to those who were Uniates, I cannot and will not confess any, unless they come over to my Church and renounce their Roman Catholic doctrine ? *A.* I did.

Q. Now, before confessing any of the Uniates who were there did you put certain questions to them by way of confession of faith, commencing, " Dost " thou believe in the Holy Synod ? " *A.* No sir. No such question was put.

Q. Dost thou believe in Jesus Christ, the Invisible Head of the Church ? *A.* After confession.

Q. You did put some questions to them after confession ? *A.* Yes.

Q. Was there any such question as this ? " Dost thou believe in the Czar " Nicholas Alexandrowch, that he is the mighty one, and dost thou promise to give " him obedience ? Dost thou renounce the Pope and his errors ? Dost thou " renounce the Catholic faith ? " *A.* I did not.

Q. Now you say you did not put any of the questions to them ? *A.* No.

Q. Did you put anything similar in effect though not in language ? *A.* No.

Q. Did you put any questions at all ? *A.* I put certain questions.

Q. To which some answered " Yes," and others answered " No " ? *A.* No.

Q. Did you ask Borys certain questions there and he refused to answer them ? *A.* No.

Q. There were thirteen people at that meeting who agreed to go into your Church—13 Uniates ? *A.* More than that.

Q. Fifteen ? *A.* More than that.

Q. Give us your estimate ? *A.* There were from 13 to 15 people who agreed to enter my Church.

Q. Did you say to them that they should keep together and try to get more and if they kept on they would get the church to be a Greek Uniate church ? *A.* No.

Q. Did you say anything about trying to get the church ? *A.* I told them to stay together.

Q. You told them to try and get others ? *A.* No.

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Sic.

Q. Now you said you would produce a book in which were the questions of your faith ? *A.* The questions I put to a candidate for admission to my Church are as follows :—1. "Do you wish to be and live in union with the Orthodox "Catholic faith ?" Answer : "I wish." 2. "Do you wish to be united with "the Orthodox Russo-Greek Church ?" Answer : "I wish with all my heart." 3. "Do you believe in one God, in the Holy Trinity Glorified and Worshipped, "the Father, the Son, and the Holy Ghost, and do you worship Him as King "and God ?" Answer : "I believe in one God, in Holy Trinity, in Father "Glorified and Worshipped, the Father the Son, and Holy Ghost, and as King and "God I worship Him." After that he kneels and says the Nicene Creed. 4. "The further use of the dogmas, traditions and rules of the Orthodox Church, "how how holdest thou them ?" Answer : "The Apostolic and ecclesiastical "regulations of the Holy seven œcumenical and local councils, and the other tra- "ditions of the Greek Russian Church, writings and forms I receive and confess. "Also the Holy Scriptures, as understood and held and kept by the Holy Eastern "Church, Our Mother, also I will receive and hold. I believe and confess there "must be seven sacraments of the New Testament, that is to say, Baptism, "Confirmation, Eucharist, Confession, Holy Orders, Marriage and Unction as "established by Christ, God and His Church, for to receive thereby grace from "above. I believe and confess that in Holy Liturgy in sacramentically Bread "and Wine."

Q. You need not repeat any further questions. Now do you deny, Father Korchinski, that you have made efforts to induce the Uniates in Alberta generally, as you came in contact with them generally, to renounce the Roman Catholic doctrines and come over to your Church—thinking you were doing right, tried to induce them to come to your Church ? *A.* Only if they came to me in the first instance. I preached in my Church.

Q. You have never gone to a man or woman knowing them to be a Uniate and asked them ? *A.* No, never.

Q. It is a fact, is it not, that more than one-half of your congregation were Bukowinians ? *A.* No, none of them.

Q. Will you explain why you said this in your examination for discovery, "I think that more than one-half of my congregation were Bukowinians." It was true that they at that time—the majority of the congregation were Bukowinians who had been Orthodox under the Bishop of Czernowitz ? *A.* Yes, the majority were then Bukowinians, but now I have three churches and the Bukowinians go to one further away.

Q. Did you, before agreeing to act as priest over the Star Congregation, take any steps to find out whether the law was the same as in the United States ?

Q. Now you make allusion in your former depositions that on the 28th January at Polushie's house the people present signed a paper to your Bishop. Do you know what became of that paper ? *A.* The Bishop has it.

Q. Did you take any steps to have it sent here for use on this trial ? *A.* No.

Q. You know that the Bishop has it and you have never taken any steps to have it sent here for use on this trial. You have no doubt the Bishop would have sent it, if it would have assisted in the trial ? *A.* Yes.

Q. Will you explain why, after promising in the examination before the

Clerk of the Court to bring your certificate of ordination, why you did not bring them ? *A.* It was impossible to bring them because I had no time to go to Wostok and bring them.

Q. You knew that they were wanted to be looked at, and still you sent them away to Russia ? *A.* I have had need.

Q. Could you not have had your lawyer submit them ? *A.* No, I supposed that you needed them only at that time you asked for them, I understood so.

Q. You brought the list of people who had renounced and also the ritual book ? *A.* The reason I did not bring the certificate was because I had temporarily mislaid it.

Q. You did bring the list of people belonging to the congregation, who had renounced the Roman Catholic doctrine ? *A.* Yes.

Q. You stated then, up to the 6th April, twenty-five heads of families had renounced the Roman Catholic doctrines and had come to your Church ? *A.* Yes.

Q. You also said that you did not know that they all formerly belonged to Father Zacklynski's congregation, most did, but you could not say that they all did ? *A.* Yes.

Q. Now you gave the names of a number of parties who had renounced and gone over to you ? [Names read.] You say those ten were among the heads of the families, each belonging to the congregation of Father Zacklynski, you said "No" ? *A.* I found out since.

Q. Now you want the Court to believe at the present time that you managed to find out, there was difficulty over the question of your being priest there and you made no further claim to the church and never interfered ? *A.* Yes.

Q. Did you on the examination say these words, which examination took place on the 13th day of June, A.D. 1901, and you appear to have said this : "I have "not once held service there since Easter Sunday. I claim I have the right to go "there and hold service. If the law will show me that I have not a right, after that "I will not claim the right" ? *A.* Yes.

Q. You did claim the right to go there to the people who requested you to be their priest ? *A.* Yes.

Q. It is the rule of your Church ? *A.* Yes.

Q. Now, do I understand you to say that the term "Uniate" is not in common use among the Little Russians themselves, as a name for their Church *A.* Yes.

Q. Do you understand that the two terms "Uniatz" and "Pravoslavni" are well understood by the common people of the Little Russians as meaning "Greek Catholic Uniates" and "Orthodox" respectively ? *A.* No.

Q. Will you look at this document, Father Korchinski, you saw that document and read it at the time of the examination of yourself and Polushie and Pylypiw ? *A.* Yes.

Q. You heard Polushie and Pylypiw admit they signed it ? *A.* I do not remember if I was there when you examined Polushie and Pylypiw.

[Document is a contract signed by the Defendants and others requesting Father Zacklynski to come to this country and be their priest—marked X 3 (Exhibit D). Mr. MacDonald asks leave to cross-examine Witness on

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this document upon condition that the answer of the Witness respecting it shall not be received as evidence unless the execution of the document by the latter Defendants is afterwards proved by him.]

Q. Now would you just read that document, Father Korchinski, or will you allow me to read it? [Document read by Mr. MacDonald.]

Q. In what respect is that translation incorrect? *A.* It is correct.

[The document marked X 4 (Exhibit E) for identification is a correct translation of the document marked X 3.]

Q. Will you look at the document shown to you marked X 5 for identification [Exhibit O] and tell me whether the translation of it, which I now produce, marked X 6 for identification [Exhibit P] is a correct translation of it? *A.* Yes, the latter is a correct translation of the former.

Q. Now it is perfectly clear in the first document that Iwan Pylypiw, Polushie and Melnyk called themselves Uniates and said there were 300 families in all. If the Defendants signed document marked X 3 they declared themselves to be Uniates? *A.* Yes.

Q. If they told you when they invited you to be their priest that they had the same faith as you and were not Uniates in belief, they deceived you? *A.* No. I explained to them the Roman Catholic belief and what I believed and the difference between them, and they said their faith was the same as mine.

Q. If they were Uniates, they either deceived you when they said that their faith and yours was the same, or else they did not tell the faith which they professed to hold as Uniates. Either they told you what was not true or else they were not Uniates? *A.* As I think myself, I would think that they said the truth in one way, because before they started to become Uniates again, because when they came here, they joined to Orthodox Church, they supposed they would be together with the Orthodox Church. When I came I was informed that Wostok and Beaver Creek were all joined to the Orthodox in 1897.

Q. Was this not a fact, that the only change they had to become "Orthodox" —you agreed they were Uniates when they signed the paper—the twice when Father Alexandroff visited the settlement. He understood that they were Uniates when they came to this country, and after coming here they joined the Orthodox Church under the administration of Father Alexandroff, and then become Uniates again, and at the time of the meeting in Fedir Melnyk's house, they were Greek Orthodox again? *A.* What I understood was that when they came to this country they were Uniates, and they afterwards joined the Orthodox Church at the time Father Alexandroff was in the settlement and they told me at the meeting at Fedir Melnyk's house that their faith was the same as mine.

Q. And therefore, you concluded that they still belonged to the Greek Orthodox Church? *A.* It is only from paper marked X 3 that I know they had declared themselves Uniates in the meantime, that is, after Father Alexandroff's visit.

Q. You were made aware of the fact that in the year 1898 a young priest sent from Galicia by the Propaganda, Father Tymkiewicz, settled among them and there received as parish priest for five months? *A.* Yes, I have heard that.

Q. And were you not aware that during his time there was no dissension and

no trouble in the Congregation, and it was as a whole perfectly quiet and settled ? *A.* Yes, I heard.

Q. Did you not also hear that Father Tymkiewicz suggested to these people that it was improper for them, being of the Greek rite, to have their church land held by the Roman Catholic bishop, and he induced the Roman Catholic bishop to place the land in the name of their Trustees ? Did you hear it ? *A.* No.

Q. Well, you heard that while Father Tymkiewicz was here a change in the title was made ? *A.* Yes.

Q. And you never were told that any effort was made to change the title of the land before Father Tymkiewicz came ? *A.* No, but I heard that it was while Father Tymkiewicz was here that the change was made.

Q. About how many priests of your own particular Church, the Russo-Greek-Catholic-Orthodox Church, about how many priests of the Church are there in America ? *A.* About thirty-two.

Q. When you first came to Alberta, you first stopped off at Seattle and saw your Bishop ? *A.* Yes, at San Francisco.

Q. And that is his See ? *A.* Yes.

Q. Did you as a matter of interest look over the list of the clergy who were under him in America and inquire about them ? *A.* Yes.

Q. Did you find among the list the name of Father Tymkiewicz ? *A.* No.

Q. Does not that satisfy you that he was not a priest of the Orthodox Russo-Greek Catholic Church ? *A.* No, it does not, as he might have belonged to the Antiochian Church of Alexandria.

Q. Under the supervision of the Holy Synod ? *A.* Yes, it did satisfy me that he did not belong.

Q. Had you any reason to suppose that he belonged to any other branch of the Greek Orthodox Catholic Church ? *A.* Yes, I have. That time two monks from Athens were coming to America, and, when I looked up the names, I recognised them as Little Russians and I read in my Official Messenger that the bishop said there are coming two priests, but he will examine them and see if he could give them jurisdiction. There is no other Greek Orthodox bishop in America, other than my bishop, but there are priests.

Q. Have you any reason to suppose that Father Tymkiewicz was one of those monks ? *A.* No.

Q. Now you heard from many that he said, " We must take out from the " French Catholic bishop the title to the land." How can you say, knowing that Father Tymkiewicz was not a priest of the Orthodox Church, that these people under him were Orthodox ? *A.* I do believe it, because Father Tymkiewicz insisted on taking the title from the French bishop and he had nothing to do with the Roman Catholic bishop.

Q. Your reason for saying he was an Orthodox priest, because he insisted on having the land of the Church in the name of the Trustees. He only said he was a Russian priest and not a Polish. Are you prepared to say as a matter of fact that Father Tymkiewicz was an Orthodox Greek priest ? *A.* As he taught them, I could understand he was so. His teaching is the same as I teach.

Q. Will you explain how the Propaganda at Rome sent out an Orthodox Greek priest to minister to Catholics of the Greek rite ? *A.* I cannot.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No 22. Rev. James Korchinsky —*continued.*

Q. Has not your reverence heard both Bishop Legal and Father Zoldac explain that interference by bishops of the Latin rite with Catholics of the Greek rite is forbidden and that the Greek Catholics of the Greek rite are under the direct control only of their one Greek Metropolitan ? Can you not conceive this idea that Petro Melnyk, &c., a few of the Congregation in this case, are ardently attached to the Greek rites and ceremonies and as earnest as you are, and they are just as jealous of having themselves controlled by the Roman Catholic bishop as they are jealous of having any subject of the Czar or member of another Church deprive them of their possessions ? Can you not understand this position, that the Uniates are as sincerely attached to the Roman Catholic faith as they are to the Greek rite and they are just as strongly opposed to giving themselves entirely to the control of a Roman Catholic bishop as they are opposed to going to your Church and being robbed of their right ? *A.* I now suppose that they are only nominally Roman Catholics in faith and they in heart are Orthodox.

Q. You say they profess to believe what they do not believe ? They say they believe what they do not believe ? *A.* They never spoke of their belief. They say they believe in " the Holy Ghost, which proceedeth from the Father."

Q. Did they not, in their Mass and Feast-day service, sing the Creed ? *A.* Yes.

Q. And do there not occur in the Creed the words, " The Holy Ghost, which proceedeth from the Father and the Son " ? *A.* Yes. The Pope of Rome agreed with the Hierarchy of Russian people that, if they united and became under the supervision of the Pope, nothing would be changed in the doctrine after that. People understand from the " Holy Ghost proceedeth from the Father and the " Son," that the " Holy Ghost proceedeth from the Father through the Son," and I, for that reason, said on the days of feasts, first, " Holy Ghost," they sing, " The Holy Ghost, which proceedeth from the Father." I can prove it from the feast book.

Q. That these people profess one thing and believe another ? *A.* When these people say in their Creed that they believe " The Holy Ghost proceedeth from " the Father," then I think they do not mean it as they do not understand it. I think what they mean to convey is that " The Holy Ghost proceedeth from " the Father, through the Son," and that is the Creed of my Church ?

Q. What is the word used in Creed as sung in the Uniate Church ? *A.* Are " Proceeds from the Father and from the Son."

Q. Are the words " through the Son " in your Creed ? *A.* In our Creed we say, " The Holy Ghost proceedeth from the Father " without mention of the Son.

Q. Do you remember who were present when P. Pasemko was examined ? *A.* Yes.

Q. Did you hear him asked the question " From whom do you believe the " Holy Ghost, &c." and the answer " No," that he believed it proceeded from the Father and Son ?

Re-examination.

Re-examination. Mr. Short :

In view of the fact that Witness wishes to leave the country at once, I will refrain from re-examining him. Not to be used against me.

Wasyl Feniax. To Mr. Short:

I came to Alberta in 1894 from Galicia and settled near the church in question. In 1895 I took steps towards getting a church erected. There was no priest there until Father Dymytrow came. He came the fourth year after I came. The next priest that came was Father Alexandroff. We had not started to build the church when he came. He came in the summer and we started to build in the fall of the same year. When we started to build, we had a meeting and we counted on 18 families of Galicians. We held a meeting at Iwan Halkow's place, about five miles from where the church now stands. The three lay Defendants, Constantine and Feder Nymyrski, Feder Melnyk, Feder Rudyk, Iwan Hawrylenko, Wasyl Psclavitz, Pavlo Kuberski and a lot of others, whose names I cannot remember, were present. I do not remember whether Petro Melnyk was present. Ivan Lacoutsa (Lakusta), Ivan Tymniak, Alexis Chorney, Demtrie Maceborski, Petro Kanash, Iwan Sachman, Wasyl Lopochinski, Iehosophat Lopochinsky, Wasyl Nikephtiuk, Eli and Iwan Danczuk were present at the meeting. They all afterwards worshipped in the church in question. At the meeting we concluded to write to a bishop in the States for a priest. Anton Sowka and the two Nymyrskis said they knew where to write to him and that he was an Orthodox Russian (Ruske) bishop like ourselves. I think that meeting was held in 1896, but it may have been in 1895. Father Alexandroff came after that meeting. There was another priest with him, whose name I forget. They came direct to Anton Sowka's. They held services in the open air at Feder Nymyrski's place near Sowka's. Many were present at the services. They were all "Rusyny," I cannot remember all, but some of those present were the three lay Defendants, Feder and Petro Melnyk, Nikola Spaczynski, Iwan Hawrylenko, Dymytrow Prokotczak, Stefan Chichak, Nikola Melnyk, Petro Nimczuk, Lewko Proczinski, Jusko Proczinski, Ivan Kudryk, Alexix Czornyi, Hnat Samborski, Petro Roskosz, Jusko Dywenka, Aryan Andruschuw, Jusko Jadlowski, Wasyl Pysklywyz and Bautko Prus. The priests opened the service. The two precentors for the service were Nikola Spaczinski and Hawrylenko. The priests told us that they were "Ruski" priests. After the service was over, Father Alexandroff gave Spaczynski a book and a little cross. There were a lot who took communion at that service, but I cannot remember who they were. The Defendant Melnyk was one. I remember Ivan Danczuk was another. After Spaczinski received the book, he told Father Alexandroff that we needed a priest, to which Father Alexandroff replied, "You will take down "the names showing how many people you have here and send it down to the "bishop, and I will use my influence to get you a priest." Spaczinski wrote out a list of the names that day after the service. He went around among the people present and got the names. I saw him travelling around after that day to get the names of those who were not present at the service. There may have been 100 families in that part of the country at that time. There were a lot of the Bukowinians in the country at that time. Father Alexandroff said to the people at that service, "Here on this spot we will build a church." He mentioned the name of the church, but I forget it. He also said, "This will be the first church, "because there are many people at a distance and after you need churches closer "you will build some more." After Father Alexandroff left, we, who were the longest in the country, talked the matter over and concluded that a church at

Nymyrski's would be too far away from us. The people near Nymyrski's said to us, "We are too poor to build a church; we will help you to build yours and "afterwards we would help them to build theirs." We had a meeting to arrange to get the lands for the church. It was at Fedor Melnyk's house. The three lay Defendants were present, also Feder and Petro Melnyk, Techkowsky, Wasyl Polushie, Nikola Spaczinski and I. There were others there, but I do not remember who they were. It was agreed that we should petition the Government to give them 40 acres of land upon which to build a church. All who were there signed their names to a paper. It was arranged that Wasyl Polushie and Iwan Sachman should go around and get the names of those who were not at the meeting. It was understood at the meeting that we were to build a Greek Catholic Orthodox church. After this we fenced an acre for a cemetery, and within a year after we started to build the church. It was built of tamarack logs which we got in the bush. We found that we could get a permit to cut logs for the building of the church. We had a meeting at which it was arranged that Feder Melnyk and Defendants Polushie and Melnyk should obtain the permit. We hauled the logs to the church. The church was not finished when Father Tymkiewicz came. The builder was working at it at the time and the walls were up a few feet. We collected some money by people going around and singing Christmas hymns. The members of the Congregation subscribed different sums in addition to these collections. I think that Father Tymkiewicz was there for about five months. He held services during the time. When he came he told us that he was a "Ruske" priest. Up to the time he came, we heard nothing from the Roman Catholic bishop. I saw some one there with Father Dymytrow, but I do not know whether he was a bishop or not. At a meeting of the Congregation held at the school house near the church, immediately after a service held there by Father Tymkiewicz, Wasyl Polushie, a son of Defendant Polushie, told the meeting about a conversation he had with the Roman Catholic bishop. Father Tymkiewicz thereupon said, "In case you accept five cents from the Roman Catholic bishop "to build this Greek Catholic Orthodox church, I will not stay another hour with "you." He told us that the French bishop was a Roman Catholic and that we were not. He also said, "I am a 'Ruske' Greek Catholic Orthodox priest." We did not get any assistance from the Roman Catholic bishop. Father Tymkiewicz left because he did not get enough pay to support him. I was at the first service held by Father Zacklynski. He told us that he belonged to the Eastern Church and that he was a Greek Catholic Orthodox priest.

Q. Do you know the cause of the quarrel between the lay Defendants and Father Zacklynski?

Mr. MacDonald objects to the question on the ground that the quarrel or its causes is irrelevant to the issues. I overrule the objection.

A. I found out that the lay Defendants as Trustees had lent him $20.00 and had advanced him $17.00 to buy furniture. The house that Father Zacklynski was supposed to live in was not finished when he came. He wanted it finished. We told him that we had no money to finish it. He told us to go to the bank and borrow $300.00 to finish the house. We told him that two or three of us could not borrow for the whole Congregation. He then suggested that the Trustees

should apply to the French bishop for $300.00 and that we should assign the church to him for three years. That the bishop would be glad of this and would give them the money. We concluded that he was not the right man for us, as he would send to a Roman Catholic bishop. When we found this out we wanted to get the money back that the Trustees had advanced him. He then appointed twelve provisors and wanted to fix it up with them. After he had selected the twelve provisors, he told them, after a service on Sunday, that they should swear. He appointed me one of the twelve provisors. When he asked me to swear, I asked him what I had to swear to. He replied: "You have to swear that you "will do whatever I tell you to do." I refused to swear this and no one did swear to it. The French bishop got the title to our land. We got a letter stating that three Trustees should be appointed to go into Edmonton and get the title to the land. This was about a week after Father Tymkiewicz arrived. Immediately after getting the letter we went to the Land Office, where we were told that the French bishop had already got the title. The Defendants Polushie and Melnyr* were with me at the Land Office that day. Before we came to town that day we had a meeting, at which it was decided that we should be the Trustees. We went to see the bishop, but we were told to return in a few days. We came back again and there saw a priest.

*Sic.

Mr. Short proposes asking Witness what occurred at that interview. I refuse to permit the question.

We got the title in our own names afterwards.

Cross-examination. To Mr. MacDonald:

Cross-examination.

The first priest I saw here was Father Dymytrow. The next was Father Alexandroff. Father Dymytrow returned a month or two after Father Alexandroff left. Father Dymytrow consecrated the cemetery. I did not object because we thought that he and Father Alexandroff belonged to the same Church, that is, the Church that I belonged to in Galicia. I have no reason to doubt that it was in the spring of 1897 that Father Dymytrow came the first time. The meeting at Halkow's was held because Sowka had told us that he knew where he could get a priest the same as ourselves. At that meeting we all thought that we were sending for a priest the same as ourselves, so long as he did not belong to Rome. In Galicia, so far as I know, besides my own Church there were Roman Catholic churches. There were no Protestant churches in my part. I knew of Jewish synagogues. When I was there was only one church attended by the "Rusyny." The church I attended was in Nybylu. I occasionally went to the church in Pyryhynsko. The services were the same in both these churches. The services held there by Father Dymytrow were the same as those I was accustomed to in Galicia. I can the same as those held by Father Tymkiewicz and Father Zacklynski. The priest of the church in Nybylu, when I left there, was Father Michailo Lapatinski. He was then an old man. He had been only a year there when I left. Births, deaths and marriages in the congregation were all registered in the church books. I do not know whether the name of the church is truly set forth in these books. When in Galicia I never heard anything of the "Uniates." I heard that we were all "Pravoslavni." I served in the army

*Sic.

in the 11th Dragoons. I enlisted in 1882 at Ternowe. When in the army I attended the church which was called the "Greek Catholic Church." It was the same service as that in the church at Nybylu. I know that it was the Orthodox Church because the priest in the service in two places used the word "Pravoslavni." My Church was called "Orthodox," because those words are used in the service. I have heard of trouble in Galicia between the Roman Catholic Church and the Greek Church. I heard that the Government had made frequent arrests of people in that part of Galicia, near Galicia and Bukowina, because they stated that they were not under the Pope of Rome. I was afraid to state that I was not under the Pope. In the prayer in our Church, where the word "Orthodox" occurs, there is a prayer for the Pope of Rome. I said it because I had to. I knew all the time that the Pope of Rome was not the head of our Church. Jesus Christ is the head of our Church. Its head on earth is a Greek Catholic Orthodox Bishop at the Synod. I do not know where the Synod is. In Galicia we said or sang in the Creed that the Holy Ghost proceeded from the Father and the Son, but we never believed it. I mean that I did not believe it. The first man that ever told me that that was wrong was Father Alexandroff. When he came here the second time, he told me that the Holy Ghost proceeded from the Father through the Son. After hearing this from him I attended services held by Father Dymytrow at the church, where he was accompanied by the present Bishop Legal, who, I was told, was the French bishop. At that service Father Dymytrow used the same Creed that was used in our church in Galicia. I never told Father Dymytrow that I and everybody in Galicia was wrong in believing that the Holy Ghost proceeds from both Father and Son. I never spoke to either him or Father Tymkiewicz or Father Zacklynski about it, although they all three sang the Creed as it was sung in my church in Galicia. Father Alexandroff came back in 1898 and remained much longer than the first time. He held services at Nymyrski's and I attended them. I never confessed to him nor did I receive communion from him. I never confessed to or received communion from Father Kamneff. Shortly after consecrating the cemetery we started out to the woods to get logs. Father Dymytrow went to the woods with us, but took a gun and went hunting. We started to build our church under the direction of Father Alexandroff. When we started to get logs for the church, we thought that he and Father Dymytrow belonged to the same Church and that they were both Orthodox and would not for worlds have anything to do with the Pope of Rome. I disliked having anything to do with Rome. I did not think anything of a Roman Catholic bishop attending Father Dymytrow's services. He did not wear any robes that day. He wore clothes like a priest. Father Dymytrow was saying Mass at the altar. The bishop sat at one side of him. I saw a large cross on his breast. Notwithstanding this I never suspected for a second that Father Dymytrow had any connection with the Church of Rome. The meeting at which it was decided that we should apply for the land, and at which the papers were signed, was after Father Dymytrow first came. It was after Father Alexandroff was there. It was before Father Dymytrow consecrated the cemetery. It was after Father Alexandroff left the first time, and before Father Dymytrow came the second time. It was about a week or ten days after Father Alexandroff left that we took steps to get the land. The land we selected

is that on which the church now stands. The whole Congregation joined in the selection. Father Alexandroff had gone before we selected the land. The meeting to make the selection was well advertised so that all could attend. Constantine and Feder Nymyrski were at the meeting, also all those people whose names I have mentioned as having been present at the meeting at Halkow's the year before, when it was decided to send for a Russian priest. The people near Nymyrski's did not intend to build at that time and intended to attend our church until they were able to build, but a lot of immigrants having come in that summer they started to build the two churches at once. Those living near Nymyrski's did not subscribe for our church because they were building their own church, but they each subscribed towards the expenses of getting the land. They each gave 30c. for that purpose at the time the meeting was called to select the land. The cemetery which Father Dymytrow consecrated was on the 40 acres. We had selected the 40 acres before the consecration of the cemetery. It was not consecrated before Father Alexandroff came. It was not consecrated until Father Dymytrow's second visit in the fall. I do not know how it was that Father Dymytrow came. We never wrote for him. I had not heard before his arrival that he was coming. He drove up to Defendant Polushie's when I was there. He told us that he was a Russian Greek Catholic Orthodox priest and I have come to stay with you. He did not tell us where he came from nor that he came from Galicia. He spoke our language just as we spoke it. I never heard how it was that he came here. We accepted his services without knowing anything about him because he conducted the services in the way we wanted them. A Roman Catholic priest baptised my child because there was no other clergyman in that part of the country. The child died and I buried it in the Roman Catholic cemetery here. That kind of baptism was better than no baptism at all. I had a second child baptised by a Roman Catholic priest, but when Father Dymytrow came I had it re-baptised by him. I procured the Roman Catholic priest because he was travelling in that part of the country. There was a Protestant clergyman holding services at that time in the school house at Star, but my children were all baptised when he came. There was no trouble of any kind in the church until the difficulty occurred about the money. The services of Fathers Dymytrow, Tymkiewicz, Zacklynski and Alexandroff were exactly the same, except that Father Alexandroff said that the Holy Ghost proceeded from the Father alone. We believed that because there is only one Ghost not two. In the services of Fathers Dymytrow, Tymkiewicz, Zacklynski and Alexandroff I did not hear any prayer for the Pope of Rome. I took communion from Fathers Tymkiewicz and Zacklynski in both cases kneeling. I also took it from Father Korchinski, but standing. In Galicia I always took it kneeling. I never took communion from Father Alexandroff. When I stated yesterday that I saw Michael Melnyk taking communion when Fathers Alexandroff and Kamneff were here, I was mistaken ; what I meant to say was that I saw him confessing. I did not see him taking communion, but he must have taken communion before confessing. I did not see any person taking communion that day. I did not take it because I got there too late to confess. It was Father Kamneff who administered communion. Father Alexandroff was not then a priest. I do not understand very well some of the things Father Kamneff said, not as well as if he spoke in our language. Father Alexandroff did most of the speaking.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No. 23.
Wasyl Feniax
—*continued.*

There is no difference between his way of speaking and mine. It was while Father Alexandroff came here the second time that he told me that the Holy Ghost proceeded from the Father alone. The reason I did not take communion from him during his second visit was because there were other fellows there and I did not wish to put myself forward. The first time I saw Father Korchinski was the day he came to baptise the Defendant Pylypiw's child. This was on the day of the meeting in Feder Melnyk's house when we asked him to be our priest. He was then living at the church at Star. Pylypiw went to him and brought him from Star that day to baptise his child. I was the only one outside of Pylypiw's family present at the baptism. While I was there both Pylypiw and I told Father Korchinski that Father Zacklynski had left us and that we had no priest, and we asked him to come and be our priest. The Defendant Pylypiw told me that he had met Father Zacklynski on the road the day before the baptism and had asked him to baptise his child, that the latter refused, and said, " I have nothing more " to do with you." Father Zacklynski had announced in church the previous Sunday that he was going to leave us. The reason he left us was because the provisors he had appointed refused to swear. At the meeting at Feder Melnyk's house at which Father Korchinski was present, besides those stated by him to have been present, there were present Michailo Melnyk and his son. Of those who were present at that time Petro Melnyk and Techkowski are the only two who side with the Plaintiffs in suit. When we asked the Father to be our priest, he said, " You " are Uniates." We asked what he meant by that term, and stated that we were Russian Greek Catholic Orthodox. He told us that we must have been " Uniates " in the old country, because we must have belonged under Rome. We told him that we were now in a free country, that we left the " Uniates " in the old country, and that we not now under " must." He asked us how we built the church and who we had signed it to. A bell was used in our services in Galicia. No bell was used in Father Zacklynski's services here, so far as I remember. I think that there was not any bell used at any of these services. I remember the service at Feder Melnyk's house at which you and Mr. Oliver were present. I do not remember whether a bell was used in that service or not. At the meeting with Father Korchinski at Feder Melnyk's he asked us what kind of a church we had built, saying, " Perhaps I cannot go into it." I think he meant to ask what sect the church was for. We told him that we had built it for the Greek Catholic Orthodox Church, but that the patent was made out for the Greek Catholic. We showed him the patent, and he then said, " This patent reads exactly like my own religion ; " you are the three Trustees ; you need not give it to anyone else, so you can keep " your own religion." I understood from this that he was advising us that we had a right to the church, and could have him as priest, provided we did not keep to Rome, but that if we did keep to Rome he would not have anything to do with us. Everyone at that meeting, including Petro Melnyk and Techkowski, expressed their willingness to accept him as pastor. Petro Melnyk never expressed any dissent. I cannot remember whether he said anything at all. We knew that we could not do with the church as we liked, but we knew that no other religion could take it away from us. He said to us, " If you will not be Uniates, and will have " nothing to do with Rome, I can be your pastor."

Sic.

Q. Did you not a few days later, in the church at Wostok, before the congre-

gation there, renounce the Pope and his errors, and were you not then received in Father Korchinski's Church? *A.* No! He asked us if we wanted to be Uniates and to be under the Pope of Rome, and we told him we did not. At the meeting at Feder Melnyk's we told Father Korchinski about the doings of Father Zacklynski. I subscribed some of the money that was sent to him. My subscription was $1.00. The money was sent to him to buy church vestments and vessels. I do not know who wrote the letter to him. The money was left at Feder Melnyk's, at a meeting at his place, Spaczynski and Zwaricz announced that they had a letter from Father Zacklynski stating that as we had no vessels or vestments we had better send him the money to get them. We subscribed the money at that meeting. He brought some vestments and vessels with him when he came. At the meeting with Father Korchinski at Feder Melnyk's I did not say to him, nor did I hear it said, that Father Zacklynski had first gone to the Roman Catholic Bishop of St. Albert. I do not remember any one telling Father Korchinski at that time about our having sent money to Father Zacklynski for church vestments. I never noticed that Father Zacklynski knelt on one knee at any time during his services. He always knelt on both knees. I never was at a Roman Catholic church in Galicia. I was only once in a chapel here, when I was in the hospital. I did not notice that the priest at that service knelt only on one knee. When in the hospital I was visited by a Roman Catholic priest. It was in the third year after my arrival that I was in the hospital. The priest did not speak to me. I did not say or hear said to Father Korchinski at that meeting that Father Zacklynski had acknowledged spending part of the money sent him on his railway fare. We told him about Father Zacklynski wanting to borrow money from the French bishop and make over the church property to him. I heard Father Zacklynski make that proposition after the service on a Sunday a few days prior to the meeting at which the provisors were appointed. The Defendants Polushie and Pylypiw and Feder Melnyk and I were the only persons present when he made this proposal. At the meeting with Father Korchinski at Feder Melnyk's I do not remember anyone asking him whether he had a bishop. He made it clear to us at that time that before we could be received into his Church we must renounce the Pope and his errors. He told us that if we changed our religion we could not take the church property unless every member of the Church went with us.

Q. What right did you few people think you had to act for the whole Congregation? *A.* Because, after we locked up the church and kept Father Zacklynski out, all the members of the Congregation asked us why we did not get another priest.

Q. Was it not after this meeting that you locked Father Zacklynski out? *A.* No, it was before. I cannot remember how long before. I had told Father Zacklynski in the presence of Paulo Pasemko and Feder Melnyk that he should never enter the church again until he showed a paper showing what bishop he belonged to. I also told him to take his stuff out of the church. I had the key at that time. I don't know whether it had been given to Petro Melnyk a day or two after the provisors were appointed. The church box was given to Petro Melnyk and the key of the box, but not of the church, was given to Podruski. After we locked Father Zacklynski out there was no meeting of the Congregation to see about getting another priest,

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No. 23. Wasyl Feniax —*continued.*

but everyone we met asked us why we did not get another priest. The only persons I can remember having spoken to me about it, outside of those who were present at the meeting at Feder Melnyk's, was Stefan Chichak and two women named Rudko and Michailczuk. After inviting Father Korchinski to be our priest I did not go and tell any other members of the Congregation about it, nor so far as I know did anyone else. I do not know of any meeting of the Congregation having been called since to discuss the appointment of a new priest. I only remember of one occasion on which I told Father Zacklynski, in the presence of Pasemko and Feder and Petro Melnyk, that he should not enter the church again, and that was the occasion I have already referred to. Polushie had told him that before in my presence. He never entered the church again after I told him that, that is to my knowledge. I was present at the marriage of Ivan Danczuk's daughter in the church. It was on that day that I told Father Zacklynski that he should never enter the church again.

When Father Dymtrow consecrated the cemetery he did not consecrate the remainder of the 40 acres. That has not been consecrated. The Defendant Melnyk and Wasyl Lopuchinski put up the cross in the cemetery. I think they put it up after Father Dymtrow left the first time and after Father Alexandroff left. The cross was erected before the cemetery was consecrated.

Re-examination.

Re-examination. To Mr. Short:

The Church of England clergymen from Edmonton and Fort Saskatchewan held service in the school house as well as Father Dymtrow and Mr. Holyer. Father Zacklynski never held a regular service in the church after our meeting with Father Korchinski at Feder Melnyk's. He had not held a service there for three or four weeks before that meeting. At the last regular service held by Father Zacklynski, he announced that he was going to leave us. That was the time he wanted us to swear as provisors. The announcement was made by him immediately after the service and before any of the people had left the church. He was in his vestments at the time and no one spoke to him because they were not allowed to do so. After he took off his vestments he and the people went out of the church. Just as they got out of the door, the Defendants Polushie and Pylypiw said to him, " Very well, you can go." All the Congregation were not there when this was said, but about ten were present at the time. The others were about. Some had started for their homes. A number of us met at Petro Melnyk's house before the meeting with Father Korchinski at Feder Melnyk's. They were the three lay Defendants, Petro Melnyk, Lewko Prochinski, Alexi Kerpitz and a man known as " Sopko." I am not certain that the Defendant Melnyk was there. At that meeting we decided to let Zacklynski go, and to get another priest. I do not remember whether this meeting was before or after the old Trustees took over the cash box. Podruski, Petro, Feder and Nicola Melnyk, Feder Melnyk, junior, Techkowski, the three lay Defendants and I were present when we took it over. The cash box is a small box about six inches square. When they took the cash box away from Petro Melnyk, he gave them a larger box to put it in and gave them a lock and key for the larger box. There is a slot in the cash box for putting in money. The key of the cash box was at the Defendant Melnyk's. When leaving Petro Melnyk's with the cash box, Polushie locked the cash box and gave the key

to the Defendant Melnyk. I then asked Petro Melnyk for the big box, and I put the cash box in it and locked it up. Petro Melnyk, the Defendant Melnyk, Nicola and Melnyk and Petro Melnyk's son took turns in carrying it to my house. This may have occurred on the same day as our meeting with Father Korchinski at Feder Melnyk's, but I am not certain that it was on the same day. At that meeting with Father Korchinski neither Petro Melnyk nor Techkowski said anything for or against him being our priest. When we first met there that day we had not the patent for the land with us. He sent for the patent and received it before the meeting closed. It was before the patent arrived that Father Korchinski told us that we must be "Uniates." After he read the patent he said, "Have "you been at service at the time Father Alexandroff was here?" We replied "Yes." He then asked us if we had heard from him that we could get free land and logs for a church and we replied that we had. He then said, "You are all right, "but you who have been under the Pope must make a prayer before being received "into our Church. These priests you had here were deceiving you." It was at the time we showed our patent to Father Korchinski that we knew that we could hold the church. The cemetery was consecrated in the fall of the year. My subscription to the church was $30.00. In addition to this I went 15 times to the bush for logs and once to Edmonton for lumber.

Q. Of the people who first organised the Congregation how many heads of families now side with the Plaintiffs and how many with the Defendants? *A.* Those who side with the Plaintiffs are Petro Melnyk, Spaczinski and Techkowski, but Spaczinski never gave any money or work. On the Defendants' side are myself, Feder Melnyk, Nicola Melnyk, Dymytrow Maceborski, Alexis Chornay, Jurko Kuschak Chichak, Prapokchak, Tymniak, Samborski and others.

Re-cross-examination. To Mr. Macdonald:

Re-cross-examination.

Ivan Melnyk is on Plaintiffs' side, he was one of the founders. Anton Pisch, another, is on Plaintiffs' side. Also Wasyl Paisz was on Plaintiffs' side until he died. Ivan Kut is another siding with Plaintiffs. Alexi Karpetz is another. The two Podruskis are others. I have not included any who, although attending the church, did not give anything towards its erection. At the meeting at Petro Melnyk's, to which I have referred, when we concluded to let Father Zacklynski to go and get another priest, the Defendants Pylypiw and Polushie suggested that we get Father Korchinski until we could get a priest who would stay in our own Church. I do not remember how long this was before we met him at Feder Melnyk's.

Feder Melnyk. To Mr. Short:

No. 24. Feder Melnyk. Examination.

I came from Galicia in the spring of 1894. The Defendants Polushie and Wasyl Feniak and I were the first three who settled near the church in question. It was about three years after we came when we first took steps to start a church. We found out from Fathers Kamneff and Alexandroff that we could get land for nothing. Before they came we had a few gatherings to talk the matter over. The Defendants Melnyk, Polushie, Pylypiw and Maceborski, Peter Melnyk,

Techkowski, Halkow, Hawrylenko, used to meet together occasionally for that purpose. It was understood among us that we were to build a Russian Orthodox church. I think that Spaczynski came here the winter after we had these gatherings and had decided what to do. The gatherings took place in the fall. We had further gatherings after he came. He was one of the men that was strongly in favour of the Orthodox Church. He said he wanted it because he knew what happened in Galicia. He told us that he had gone to Russia on a pilgrimage and that their services there were very nice. I think Father Alexandroff came the summer after Spaczyinski's arrival. Father Dymytrow had been there before Father Alexandroff came. Father Dymytrow was there for the Easter services. He remained ten days and left on St. George's Day (23rd April, according to Russian calendar, and 5th May according to the Julian calendar). Father Dymytrow, at a service held by him in the school house, told the people what kind of yoke they had been under, but that here they had come to a free country ; that they were under a Polish yoke. When he said this the people all cried. He said that he did not know anything of the French bishop here. I think that Father Alexandroff came on St. Peter's Day, which is in June (Julian calendar). He held a service which I attended. All the "Rusyny" in that part of the country and some Roman Catholics attended the services which he held near Nymyrski's place. Spaczynski sang at that service. At that service we all signed a piece of paper. There was something written on it by Father Alexandroff. We talked about building a church and about getting land to build it on and about the logs. The lay Defendants Nicola Melnyk, Petro Melnyk, Wasyl Feniak, Dembrowski, Kinasz, Tymyak, Spaczynski and others were talking over these matters together at that service. Some of those present wanted it built at Nymyrski's place. Father Alexandroff said, "Build it wherever you "like." We came to a conclusion. Father Alexandroff wrote something on a piece of paper and we signed it. He gave Spaczinski a prayer book and a cross. We collected some money to make entry for the land. We collected it at Halkow's before Father Alexandroff came. After Father Alexandroff went away we went to the Land Office about the land and we got the 40 acres. We began to build in the spring of the year Father Tymkiewicz arrived. I don't remember what year he came, but it was the year after Father Alexandroff's first visit. We got a permit for logs to build the church. The walls were about breast high when Father Tymkiewicz came. We were building an Orthodox church because he told us that he was Orthodox, and because Father Alexandroff's service at Nymyrski's we had agreed to build a church of that faith. We subscribed money to build it. I gave $50.00 and went twelve times to the bush for logs and came three times to Edmonton for lumber. I cannot remember how I gave my subscription. It was in several sums of different amounts. When Father Dymytrow was there the Roman Catholic bishop attended one of his services in the school house. It was on the Feast of the Holy Cross (14th Sept., Julian calendar). There was no talk at that time about building. I did not hear the bishop say anything. I was present at only one service at which he was present. It may be that he did speak after the service was over and that Father Dymytrow interpreted him. I cannot remember. I heard Father Dymytrow say that day that the bishop had taken steps to procure the land. Father Tymkiewicz

came the next spring, after Father Dymytrow left the last time. Father Tymkiewicz remained five months. He came a week before Easter. He held services in the school houses and private houses. He told us that we should not take anything from the French bishop, that he did not belong to the French bishop, and that if we took anything from him, he (Tymkiewicz) would leave us. He told us that we were all Orthodox. The Congregation were all satisfied. We spoke about this every time he held Sunday services. When he was there we went to the Land Office to see about the land and we found that it had been entered for by the French bishop. We then went to see him about it. We saw him. We went three times to see him. On the third time we told him that if he did not give it back we would go to a lawyer. He then gave it back. A letter came from the Land Office that the French bishop had entered for the land. Father Tymkiewicz called a meeting of the Congregation about it. It was decided that we should go and get the land back. The lay Defendants were appointed Trustees. Father Zacklynski came during one summer and I think he left during the following summer. Before he came we had a meeting and subscribed money to send to him to buy vestments and church vessels. This was at a meeting at my house. I never signed any document that was sent to him. I did not hear read any document that was sent to him. I did not go before Dan McLean, J.P., about sending the money. I cannot read or write nor can I sign my own name. I was not at any other meetings about that time. I was at the first meeting after he came. It was held at my house. There were a lot of people there including the Bukowinians. I was at his first service in the church. There were so many there that all the people could not get in.

Witness stands aside.

Arthur G. Harrison, recalled. To Mr. Short:

I produce a document from the files now in my office, marked X.11 for identification (Exhibit 9). I yesterday made a search in my office for the purpose of ascertaining what lands in the vicinity of the church in question have been granted for church purposes.

[Mr. MacDonald objects to this evidence as irrelevant; I admit the evidence.]

The lands on which the church in question is erected are Legal Subdivision 1 of Section 27, Twp. 56, Range 19, West Fourth Meridian. Other tracts for which applications have been made for church purposes are Legal Subdivision 4, Section 23, Twp. 55, Range 18, W. 4th; Legal Subdivision 1, Section 17, Twp. 56, Range 18, W. 4th Meridian; and Legal Subdivision 4, Section 22, Twp. 55, Range 16, W. 4th. In the case of the church in question the application was made originally by Bishop Legal. The application for part of Section 23, Twp. 55, was made for the Russian Orthodox Church. That for part of Section 17, Twp. 56, was for the Corporation of the Roman Catholic Bishop of St. Albert, and that for part of Section 22, Twp. 55, was for the Russian Orthodox Church. I am familiar with the handwriting of Mr. Ruttan, who was the land agent here up to about

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No. 25. Arthur G. Harrison —*continued*

Midsummer, 1900, and I also know the signature of Jules Royal, who was formerly a clerk in the office here. I think the words in blue pencil, " Greek Catholic Church," are in Mr. Royal's handwriting. The four lines written at the top are, I think, in Mr. Ruttan's handwriting, also the words " for a church " under the printed word " Requisition " ; also the writing following the printed word " Remarks," in Mr. Ruttan's handwriting, also the words, " for a church " under the printed word " Requisition " ; also the writing following the printed word " Remarks," except the words " Greek Orthodox " thereon. The words in blue pencil, " State whether Catholic or Greek Orthodox," are also I think in his handwriting, also the words " Trustees or priest in charge of the Church." The words at the bottom stating to whom permit was sent are, I think, in Mr. Royal's handwriting.

Cross-examination.

Cross-examination. To Mr. MacDonald :

I would infer from the appearance of paper X.11 (Exhibit 9) that it was sent out by mail from the office for the purpose of being signed by the applicants and that it was received back at the office on 7th December, 1897. The files in my office show that Bishop Legal paid the patent fees for the land on 26th January, 1898. According to the practice of our office, before a patent fee could be accepted on an application for a patent, it would be necessary for the Trustees, or some one on their behalf, to make a declaration setting out the correct name of the church and the purposes of the trust. That declaration would be sent to the Department of the Interior, and the patent would be issued on the basis of it. The files in my office do not show by whom that declaration was made. In addition to the applications for church properties that I have mentioned, I find on my files that an application was made on 23rd July, 1897, by V. V. Alexandroff, Missionary of Greek Orthodox Russian Church, for the S.W. $\frac{1}{4}$ of Section 23, Twp. 56, Range 18, West of 4th Meridian, 40 acres for a church mission grant, and 120 acres for a priest's homestead. The patent fee was paid about 13th January, 1898. Up to this date no patent has been issued for this land, the reason being that no declaration giving the official name of the church has been filed.

Feder Melnyk resuming.

Feder Melnyk, resuming. To Mr. Short :

At Father Zacklynski's first service in the church he said, " Our religion " comes from the Eastern Orthodox. The Western Church does not concern us ; " we have nothing to do with it." The worst trouble with him started when he wanted to get $300 from the French bishop. He said to the lay Defendants and Feniak and me that we should sign the church over to the French bishop for three or four years to get money to finish the priest's house. This opened our eyes to the fact that he was pulling us to the Latin Church. Then he wanted to elect or pick out Trustees and wanted them to swear at the church. They did not want to swear. Wasyl Feniak asked what he wanted them to swear to. He replied that they should swear to do as he told them to do. They did not swear, and when they refused, he told them that he would not be their priest any more. Petro Melnyk then began to figure up the money Father Zacklynski had taken. Immediately

after the service a lot of us went up to Petro Melnyk's and started to figure out the money, but they could not do so because they were quarrelling. Father Zacklynski, who was present, said, " If that is the case, I will not be your priest any longer." That same evening he moved out of my house and moved over to Paulo Pasemko's. I do not know how long he remained there. About a week or two after that he married Danczuk's daughter. Up to the night they quarrelled over the making up of the money, the cash box was at my place. I think it was taken to Petro Melnyk's house that night. It was not brought back to my house. It was afterwards removed from Petro Melnyk's to Wasyl Feniak's. I was there when it was taken to the latter place. We went up there to get the box because he would not pay the money for the insurance. Those who were there were the Defendants Polushie and Melnyk and their sons, Nicola Melnyk, Petro Melnyk, Paulo Fedorku, Podruski, Ivan Melnyk and I. The cash box was kept in a larger box belonging to Petro Melnyk. Two at a time carried the box. They all took turns at carrying it. I remember Father Korchinski meeting a number of people at my house. They were Feder Melnyk, a son of the Defendant Melnyk, Nicola Melnyk, Wasyl Feniak, Petro Melnyk, Techkowski, the Defendant Polushie, the Defendant Melnyk, and Pylypiw and I. We told him that we were Greek Catholic Orthodox. We had the meeting because we wanted him for our priest. We told him that now we had no priest, we wanted him for our priest. He said " No ! you are Uniates." We talked matters over, and after that we brought him the patent. After we showed it to him he told us that it read, " Greek Catholic Orthodox," just the same as his Church. He said, " I don't want to accept you that way. You " will have to come to my Church and unite with me."

Cross-examination.

Cross-examination. To Mr. MacDonald :

I came from Pyryhynsko in Galicia. Petro Melnyk and Nicola Melnyk attended the same church there as I did. There were two churches there for the " Russyny " people. I went to both of them and also to the church in Nybylu. I knew the lay Defendants Wasyl Feniak in Nybylu. The service in their church was the same as in ours. So far as I know, all the " Russyny " in that part of the country belonged to the same Church as I did. The Poles in Galicia all belong to the Latin Church. There was one Russian Orthodox church in Galicia, viz., in Lemberg. I knew of it when I was in the army. I never was in that church. I never had any difficulty with my priest in Pyryhynsko about matters of religion. I followed the service there because I had to. I had to go somewhere to pray and that was the only place to go to. We knew ourselves that it was wrong. I do not know how I knew that it was wrong. I do not know what was wrong with the creed in Galicia. I now say that they have two Holy Ghosts in Galicia and there should be only one. In the Creed I used to say in Galicia—I used the words, " The Holy Ghost which proceedeth from the Father and the Son."

The first time I saw any priest in this country was when Father Dymytrow came and consecrated our Easter bread. Our Easter lasts for three days. The Defendants Melnyk and Polushie and I worked together in making the cemetery cross. Up to the time I came to this country I never attended any church but my own. The first services I attended here were those of Father Dymytrow during that Easter season. He remained there about ten days on that occasion.

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Feder Melnyk —*continued.*

I had no fault to find with his services because he said he was an Orthodox priest. His services appeared to be the same as those I attended in Galicia. I remember Bishop Legal being there once with Father Dymytrow, but I do not remember whether it was the first or second time the latter was there. I heard at the time he was there that he was the Roman Catholic bishop. He sat at one side of the table used as an altar. I don't remember how he was dressed. I think he was dressed in black. He may have had some white on him.

[Mr. Short admits that on that occasion Bishop Legal pronounced the pastoral benediction.]

We heard that Father Alexandroff was coming. We heard from Nymyrski, Halkow and Sowka that Russian priests were coming. I thought, when I went to hear Father Alexandroff, that I was going to hear a priest of my own Church. It was Mass that was held at that time. Father Kamneff said the Mass. He and Father Alexandroff said it together. They were dressed in the same way. I could understand what Father Kamneff said when he talked. His talk was a little different from ours, but we could understand it. I saw Father Alexandroff the next day at Nymyrski's. I saw him again at my place the same week, as he was passing my house. We did not ask him to look at the forty acres we had selected for our church. There had been no burials in our cemetery at that time. We all signed a paper at Father Alexandroff's service. Those who could write wrote their names ; those who could not write, Spaczynski wrote for them. Father Alexandroff wanted us to build the church at Nymyrski's, but we did not want to. He then said, " Build your church wherever you want to, and I will come " and be a priest among you all." No one ever told me that he and Father Dymytrow were priests of different Churches. I did not confess to or take communion from Father Alexandroff. At the time he left the first time I fully believed that he and Father Dymytrow were both priests of the Church I belonged to in Galicia. As far as I could judge the whole community believed the same because they both said that they were Orthodox. I did not go to the Land Office with Father Tymkiewicz at any time. I only went once with the Trustees to see the bishop about getting back the land. We went to the mission here. The bishop was at St. Albert, and we did not see him. It was the Trustees who told me about the other visits to the bishop ; I was not there myself. I knew that the Archbishop of Lemberg was the head of our Church. Father Tymkiewicz never said in my hearing that he did not belong to the Roman Catholic bishop, but to Archbishop of Lemberg. I was a regular attendant at his services. He held services at Rabbit Hills at that time as well as in our neighbourhood. We were all satisfied with him and his services. Father Zacklynski lived in my house up to the time the troubles began and we were on very friendly terms. I turned him out of my house at the time he wanted to get $300.00 from the French bishop. It was for that and for some other reasons that I turned him out. I knew that Father Alexandroff was back in the country when Father Tymkiewicz was with us. I never saw him in our part of the country during that time. None of our people went to his services during that time. I did not go to Father Korchinski's church at Wostok the day after our meeting with him at my house, but I went there about a few days after. On the day before he first held service in our church the

Trustees and some others, including myself, renounced our Roman Catholic doctrines in presence of the congregation in his church at Wostok. He asked us if we renounced the Pope of Rome and his errors, and we replied that we did. We kissed the Gospels and the Cross. After that he confessed us and gave us communion. Before taking the communion we fell on our knees, but we stood during communion. That was the second time I had taken communion standing. I had taken it standing on one occasion in my church at Nybylu, but I had often seen others taking it that way in that church. The people who were at my house the night Father Korchinski was there asked him to be the pastor of our church. We did not consult anyone outside of those who were present about appointing him our pastor. We have never had a meeting of the Congregation since about it. We undertook to act as if we were the whole Congregation.

Re-examination.

Re-examination. To Mr. Short:

The Polish Church and my Church in Galicia were not on good terms with each other. I think the Polish Church had the most authority there.

[Mr. Short proposes asking Witness as to what took place at a meeting at Halkow's at which Spaczynski, Chichak, Hawrylenko and others were present. Mr. MacDonald objects as not being a proper subject for re-examination. I refuse to allow the question by way of re-examination. I intimated to Mr. Short that as a matter of discretion I would allow the question, but he appeared unwilling to accept it except as a right.]

I did not hear Father Dymytrow in his services here use the prayer for the Pope of Rome that was used in our church in Galicia. Father Dymytrow told us that we did not belong to the Roman Church. At the meeting at Petro Melnyk's where the quarrel took place about the cash box, we spoke about Father Korchinski.

[Mr. MacDonald proposes to ask certain questions about the meeting at Petro Melnyk's, which he says was for the first time referred to in re-examination. I refuse to allow him to cross-examine further.]

No. 26.

Rev. Vladimer V. Alxandroff. Examination.

Reverend Vladimer V. Alxandroff. To Mr. Short:

I am a priest of the Greek Catholic Orthodox Church, and I reside at Seattle, Washington. My ecclesiastical superior is the Bishop of North America and Aleutian Islands. I was ordained priest on 1st April, 1900. For two years before that I was a deacon, and for over a year before that I was a missionary in this country. I was in the service of the Church in Russia for five years before coming to America. I have now charge of a congregation in Seattle. My mission extends over the States of Oregon, Washington, Montana and Idaho and in British Columbia. I have visited missions in this vicinity. My first visit here was with Father Kamneff in June, 1897. I also visited here in each of the years 1898, 1899 and 1900. My first three visits were with Father Kamneff. I came alone in 1900. I came principally as a missionary. In 1897 I visited Wostok and the surrounding

district. The district was then known as the Limestone Lake district. I also visited Rabbit Hills that year. Father Kamneff and I always went together. I found many Galicians in the Limestone Lake district that year. It was for them we went there. After we got there, Spaczynski and a number of others told me that they had written for me.

When we reached Limestone Lake settlement we were well received. We held services, the first one at Nymyrski's place. After these services a great many approached us and expressed themselves as glad we came. A number told us long pathetic stories of their sufferings in the old country. They told us about persecution by the Government in Galicia and Austria generally, in which persecution the Polaks had been the chief instruments. Among those who spoke to us of those persecutions were Spaczynski, Hawreylenko, the Nymyrski's, Michael Melnyk and a great many others. Their general complaint was of oppression in the old country, and they appeared glad that they were now in a free country. They also told us that they had written for us, that we were their brothers, and that they were glad that we had come ;—that they were free here and could practise their religion independent of Rome. Spaczynski made this last statement. I told them that they were free and could practise their religion here free from Rome. I also told them that we had nothing to do with the Pope of Rome. I told them that the Government was liberal and that they could practise their religion as they desired. That I heard that the Government would let them cut timber for a church. After that we tried to select a site for the first church and for the mission headquarters. Father Kamneff and I wanted them to select a site adjoining Nymyrski's farm as a central site. We and some of the people decided upon that site. Some of the people from the neighbourhood of Star said that it would be too far for them. We told them there should be no disputes among them, that they could take other lands, the most convenient to them, and build other churches and that, when our missionaries would come, they would take care of all of them. Good-will seemed to prevail at that time and every one appeared satisfied. We suggested that they should make a schedule of names of those who liked us and wanted to be our followers. Before this we explained clearly to them who we were, viz., that we were missionaries of the Greek Catholic Church, or in this instance of the Russian Greek Catholic Orthodox Church ; that we were Russians, and, according to history, were their brothers and that in our veins ran the same Russian blood. We announced that if anyone did not understand anything about us they should ask us. The matter of the schedule was readily taken up by Spaczynski. I saw a great many names on the paper. I told Spaczynski to keep it up and when the names of all those who desired to follow us were obtained, he should deliver it to us. He stepped forward and asked me if I would give him a book for services, as they were anxious to pray to God—that they had no book of daily service. I gave him one. He looked at it and said that in his country they had in their churches, church books brought from Kiev and Pochaew. He told me that he knew a great deal about these places as being remarkable for Russian pilgrims. He also said that he had talked a great deal to his people about those places and its monasteries and churches. We held services every day we were in that part of the country, not only at Nymyrski's but at other places, namely, at Beaver Creek, about six miles from there and near Michailo Melnyk's, and at Rabbit Hills. We also held

some services for Bukowinians who lived towards Victoria from Nymyrski's. We performed a marriage and baptised children. Father Kamneff confessed a great many and gave them communion. Before confessing them we gave a sermon to the people telling them what Church we belonged to and that, before confessing them, they must renounce the Pope and his errors and announce their intention to be true to the Greek Catholic faith. After this they came to confession. Before confession a believer has to be prepared by prayer, and fasting if possible, and then they come to confess their sins. At our service the confessions took place wherever we had services. The confessions were made in the open air, but all others stepped aside so they could not hear. In our subsequent visits our doings were the same as during our first visit. I never met Father Tymkiezwicz on any of my visits. I wanted to meet him, but I never met him. On our subsequent visits we held services in the same places as during our first visit as well as at other places. On one of our visits, either our first or second, we held service at Iwan Danczuk's house and blessed the house. Among other services we held one at the house of a Pole, a Roman Catholic named Jusko Dywenka, at his request.

[Mr. Short purposes asking Witness what Dywenka said and claims that it is admissible to show the feeling of the community. I refuse to receive the evidence.]

Among those I remember receiving communion from us at Nymyrski's were, Stefan Chichak, the Defendant Melnyk, Hawrylenko, Halkow, the two Nymyrski's and their families, Iwan Kudryk, Joseph Proczinski. There were hundreds took communion from us there, that is, including women and children. Among those who took part in the services there were, Spaczynski, the two Nymyrski's, Halkow. Hawrylenko. A great many others joined in singing. I am a Little Russian, There is no distinction so far as I know between Little Russians and Great Russians or in their languages. There are slight differences in their languages but not such as to show that Little Russians and Great Russians are different peoples. They are of the same race and possess the same language. The only difference being in dialects. The root of the word "Russian," "Russyn," "Russini," "Russki," is "Russ" which means "Russian." The word "Russyny" is the word "Russini" incorrectly spelled. The termination "sin" in Russian means "Son," therefore the word "Russyn" means "Son of Russia," and when we speak of Great Russians, we say "Vekto Russ," Little Russians we say "Malo Russ." The common standing name of my Church both canonically and generically is "The Greek Catholic Church." It is generally known by that name in America. It is also called the Greek Catholic Orthodox Church. Russians call it the Russian Greek Catholic Orthodox Church. In my letter Exhibit M, I use the term "Russian Orthodox Church." That is one of the names which the Russians give their Church. The certificate referred to in that letter was a certificate of our bishop which was enclosed with the letter. In our service we use the language of the country in which the service is held or the language of the congregation as the case may be. In my church in Seattle I use both Greek and English as many of my congregation are Greeks. I always preach in English. In the American Encyclopedia, published by Appleton & Co. in 1883, it is stated that my Church is called by the following names, viz., "The Greek Church," "The Greek Catholic

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Church," "The Orthodox Greek Church," "The Orthodox Church," and "The Eastern Church." I do not recognise the Uniate Church by the name of "The Greek Catholic Church," unless the word "Uniate" also appears in the name. We are the Greek Catholic Church. In Russia it was called the Greek Uniate Church. Its adherents were known as "Uniates." I never lived in Galicia. There are now no Uniates in Russia. A number made pilgrimages from Galicia to Kiev and Pochaew. The practice in our Church in taking communion differs. Some take it kneeling, others take it standing, others prostrate themselves before taking it. In my church in Seattle the Greeks take it kneeling. In our service we use a bell when using St. Gregory's Liturgy in Lent. It is used to let people know when to kneel. In some of our churches bells are used during services. In receiving into our Church those who have partaken of the services of the Uniate Church, we call upon them to renounce the Pope and his errors, to acknowledge allegiance to our Church, promising to be strong in our religion. In the case of a Uniate who has united with our Church, and afterwards attended another church, I would examine him to ascertain whether he had ceased to be a believer in our Church. In our confession one of the questions put to everyone is whether he has ceased to believe in our Church. If a bishop of the Church of England attended my services, I would give him the post of honour as a dignitary of the Holy Church. I know Iwan Workum. I met him the first time I came here. He invited us to his settlement to hold services at Rabbit Hills where he lived. We went there and held services at Fur's house. Before the services we preached and told the people who we were and our creed. Workum treated us well. He told us that he believed in the same Church that we represented and he was active in organising a congregation for us. To my belief he united formally with us at that time. It is not the custom of priests of our Church, when receiving members, to ask them whether they believe in the Holy Synod or in Czar Nicholas, or to promise to recognise him and be faithful to him. I never heard of any such questions being put to a candidate.

I have had a good deal of experience with Galicians both here and in the United States. I have a number of them under me in Seattle and the neighbourhood. The Supremacy and Infallibility of the Pope, the Immaculate Conception of the Virgin Mary, Purgatory and the FILIOQUE clause in the Creed are matters of doctrine which have been introduced by the Roman Catholic Church since the union of the Galician Greek Church.

Q. What has been your experience with Galicians generally respecting these doctrines ?

[Mr. MacDonald objects on the ground that the experience of the Witness with Galicians who are not members of their Congregation is irrelevant. I sustain the objection.]

Q. What has been your experience with the members of this Congregation with respect to these doctrines ? *A.* I have found out and am well convinced that they have very little consideration for them. To them these doctrines exist only theoretically, and the only consideration they have is for that of the supremacy of the Pope, which they very strongly object to. Looking at and reading Exhibit D, I would say that it is not written by an educated man, as there are many faults

in its grammatical construction. Upon looking at the translation of it, Exhibit E, I would say that it is incorrect in the following particulars:—the words "we are all Uniates," should be "we ourselves are Uniates"; the sentence translated "among the Bukowinians we can find about 40 families of Uniates and there "are of them in all 300 families," is somewhat ambiguously expressed, but I take it that the meaning intended to be conveyed is that there were 300 families of Bukowinians. I have examined Exhibit A; I would say that the entries in it were made by a person who was incompetent for the work and who was scarcely literate.

Cross-examination. To Mr. MacDonald:

I came from the province of Kherson, south of Kiev. Little Russian is spoken there. It adjoins the Ukraine. There is no Ukraine dialect. The Little Russians in Russia are never called Ruthenians, but those who are in Austro-Hungary are sometimes called Ruthenians by foreigners. I never knew of that name being applied to any other people than the Little Russians of Austro-Hungary. If I were asked by another Russian where I came from, I would say that I was a "Malo Russ" or a "Russin," or I would name my province. The Little Russians of Russia, as well as those of Austria, call themselves "Russin." This means "Russian," and does not distinguish between Great and Little Russians. In Great Russia the word for "Russian" is "Rossia" or "Russ." There is an adjective "Rossiski," formed from "Rossia." The Little Russian language is a dialect of Great Russian, not a different language. I am aware that other nations look upon them as different languages. I am a priest of the Greek Catholic Orthodox Church. I have not brought my credentials with me. My certificates are now in my house at Seattle. They are framed and I cannot carry them about with me. I would not allow an agent of the Plaintiffs or a photographer to take a copy of them unless I consulted my attorney. I am not sure whether the word "Catholic" appears in them as part of the name of my Church. I am not sure that it does. The Bishop of my Church in America is under the Holy Synod of Russia. That is as a matter of administration. He ordained me. The Holy Synod has no authority over Greeks in Greece or Turkey, who are under the Patriarch of Constantinople. I am only a priest of the Greek Catholic Orthodox Church in the sense that I believe the Russian Orthodox Church to be the Greek Catholic Orthodox Church. My missionary work in Russia was among, not only the adherents of my Church, but also among those who were not. I was engaged for five years in that work. I have now a letter of recommendation from the Patriarch of Constantinople. When I first came here I was informed that a priest had been in that neighbourhood before me, but not that he was a Uniate priest. I knew before I came that all Russian-speaking Galicians were Uniates when living there. I knew that they were obliged to be. I knew that there were a great many Galicians here. I did not meet any subjects of Russia when I was here. I told them that I was a Russian the same as themselves. I may have told them that I came from Russia, but I am not certain that I did. I have a book in which I keep a list of those who received communion at Nymyrski's when I was there the first time. None of the Plaintiffs or Defendants appear in that list, but the list may not be a complete list. It is not a complete list, as it was impossible

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to make a complete list. The following is a translation of the heading of the list:— "Names, surnames, and family of newly-joined members and by whom they are united." The list in the book is a memorandum to be kept at the mission headquarters. The names of Feder Melnyk, Nikolai Melnyk, Wasyl Feniak, Stefan Chichak, Nikola Techkowski and Nikola Spaczynski do not appear in the list. A number of those on the list are Bukowinians, who belonged to the Orthodox Church there, which has its own Metropolitan. I have not in this book any distinguishing mark to show which of those whose names appear in it were received from other churches and which belonged to my own faith, and I cannot tell from memory which of them were received from other churches. On my return to Edmonton from my first visit I went to the Land Office and made application for the site near Nymyrski's, which I had selected. I did not, before leaving the settlement, ask the people living near Star to let me know where they wanted their church, in order that I might apply for both at the same time. It is a rule of our Church that Church lands should be vested in the bishop, but it is not strictly observed in America. I observed it when applying for the site at Nymyrski's. If I had applied for the lands for the church in question, I would probably have applied in the same way if I had time. I do not know what would have prevented me making the two applications at the same time. I applied personally to Mr. Ruttan for the lands for the church at Nymyrski's, and at that time I handed him my card. The card you now produce is the card I handed him at that time.

[Mr. MacDonald tenders the card as evidence. Mr. Short objects. I rule that the card is not receivable as evidence against the Defendants.]

On that card I style myself, "V. V. Alexandroff, Missionary of The Greek Russian Orthodox Church." I say that in some of the papers used by me at that time the word "Catholic" appeared as part of the name of my Church. During my second visit in 1898, Father Tymkiewicz was, to my knowledge, holding services at Star. I was there about a month or more during that visit. I knew that he belonged either to my Church or to the Uniate Church, from what I heard of him, though I did not pay much attention. I thought he belonged to my Church. On my way to Nymyrski's on that visit I passed Star post-office. My headquarters were at Nymyrski's. I never called to see him. I came here by the appointment of my bishop. Father Tymkiewicz, if a priest of our Church, could not officiate there unless by the appointment of my bishop, unless he were appointed by a Bukowinian bishop. I remember Michailo Melnyk and Wasyl Feniak at my services at Beaver Creek in the neighbourhood of Sachman's and Lopuchinski's in 1898. I think I held service at Beaver Creek in 1899. I find, upon referring to the entries in my book, I was at Wostok on 6th June, 1900. I cannot tell how much longer I remained there. When I was there on that occasion, I heard nothing about any of the people having sent for Father Zacklynski.

Q. Can you mention any book in which your Church is called the "Greek Catholic Orthodox Church"? *A.* I cannot, at present, remember any particular one. In Russia all the services are conducted in the old Slavonic language. In Russia, under the laws of our Church, a visiting bishop of the Roman Catholic or English Church would be allowed to sit at the altar during services.

Re-examination. To Mr. Short:

Re-examination.

In the list of names in my book the name of Stefan Chichak does not appear, but he and his wife must have taken communion from me, because I married them, and therefore they must have taken communion from me. The following names among others appear in my books as having taken communion in 1897. Nikila Briks, Michael Kasupski, Joseph Prochinski, Wasyl Strachuk, Leon Prochinski, Alexander Karpetz, Iwan Danczuk, Iwan Kozsuk. Michael Melnyk took communion from me at that time, but his name does not appear on the list. The services were in the open air, and I did not always have at all times the facilities for entering the names, so that probably I forgot some of them. Some of those who took communion on my first visit I knew to be Uniates, and they were made to renounce before being received into communion. I made application for several church sites here, but some have been made by others. The reason I did not go to see Father Tymkiewicz, was because I was very busy and had no opportunity. When I heard of him I could not find out what kind of a priest he was, but I heard that he was a good man and that the people were satisfied with him. I heard that he did not want to have anything to do with Rome, and I thought that he might be an Orthodox priest. The attendance at the services at Wostok increased year by year. In 1898 there were more than 300 families in the district through which I travelled. The church in question is about three or four miles east of Star post-office.

Re-cross-examination. To Mr. MacDonald:

Re-cross-examination.

Our bishop furnished part of the funds for the erection of the church at Nymyrski's. I never heard of his being asked to contribute to the erection of the church in question.

Michael Polushie. To Mr. Short:

No. 27. Michael Polushie. Examination.

I came here from Galicia nine years ago next May. I am one of the Defendants. I am a member of the Greek Congregation at Star, was one of the original members and was very active in getting the church built. The first time we took active steps to organise a congregation was at a meeting at Halkow's which we held before any priest came to our part of the country. The next meeting we held was at my place to discuss at what place the church should be placed. We decided that it should be built where it now stands. There were about 17 or 18 people present, all of whom were Galicians. The Plaintiff Melnyk and the three lay Defendants were among those present. We decided to build a Greek Catholic Orthodox church. We collected money for the church. Father Dymytrow was the first priest who arrived. He came before we started to build the church. He came before Easter and consecrated the Easter bread. He remained there two weeks. There was nothing said when he was there that time about organising to build a church. Father Alexandroff came about two months after Father Dymytrow left. We went once to his services. I was at one of his services. At that service he told us that we were Greek Catholic Orthodox and then Spaczinski wrote down the names of 60 families. He told us that we should take

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steps to build a church. We knew that he was Greek Catholic Orthodox because the people said he was. He told us that he was of that faith. Father Kamneff was with Father Alexandroff on that occasion. They asked us if we came from Galicia. The people on that occasion talked about building a church at Nymyrski's. Those of us who lived near the church in question said that it would be too far away from us. We then held a meeting at my house and selected a site for our own church. We then collected 30c. from each family to pay the Land Office fees. We paid $10 for the entry. We got a permit for timber and built the church of logs. Fedor Melnyk, my son Wasyl and I got the permit. I was at the meeting when we called Father Zacklynski. There were quite a number present. Among those present were Joseph Proczinski and others, whose names I cannot remember, who belonged to the Wostok congregation. I was at Father Zacklynski's first services in our church. When he arrived, he told us that he belonged to the Greek Catholic Orthodox Church and to the Eastern Church. The quarrel in the Congregation was caused by Father Zacklynski appointing twelve provisors and stating that they should swear. He did not say what he wanted them to swear to. They asked him what they were to swear to. He did not tell them what it was they were to swear. They refused to swear and he then said, "From this day on I "will thank you for your services," which means that he would leave us. We had not money enough to finish the priest's house. He suggested that we should get it from the bank. We did not want to go there. He then suggested that we should go to the Roman Catholic bishop and sign over the church to him as security for a loan of $300. When he first came he told us that he had nothing to do with that bishop. When he made this proposition we knew that he was a Roman priest and not of our own faith. The Congregation never had anything to do with the French bishop. I was at the meeting with Father Korchinski at Feder Melnyk's. It was not a meeting, we just came together. Father Korchinski was passing there on his way back from Pylypiw's, and he just came in there. We asked him to be our priest. Techkowski was at that meeting. When we asked Father Korchinski to be our priest he said, "You are Uniates." We replied, "We "left the Uniates in Galicia." We also said that when we crossed the ocean we knew we were free, that when we were in Galicia we had to be Uniates. He asked us to show him our deed of the land. We sent for it and showed it to him. After reading it he told us that it read just the same Greek Catholic as he was. We begged him to come to our church. He said, "You will have to unite with our Church "to show that you have nothing to do with Rome." I never saw Nikola Spaczinski write. He never made any entries in a book in my presence. I saw him writing on an ordinary piece of paper, but never in a book. The times we went collecting the Defendant Pylypiw or the Defendant Melnyk would tell him to write it down on a piece of paper. I knew that he was Secretary and Pylypiw Treasurer, so I never bothered my head about it. I gave $50.00 towards building the church. I went twenty-two times to the bush for logs and five times to Edmonton for it.

Cross-examination. To Mr. MacDonald:

I don't remember how long it was before Father Dymytrow came that we held the meeting at Halkow's. I cannot remember whether there were any Bukowinians at that meeting. We agreed there to build a Greek Catholic Orthodox church. I did not know any other religion than that. That was the religion I

had practised in Galicia, but there we had to be under Rome, and would have been punished if we had not. I knew in Galicia that the Pope was a Latin and that I was a Greek Catholic Orthodox. In Galicia my Church was called "The "Greek Catholic Orthodox." It was called "Orthodox" because in a part of the service we prayed for all Orthodox Christians. At that meeting Sowka may have said that he knew where to get a Russian priest of our faith. I supposed that we were getting one of my faith. When Father Dymytrow came he told us that he was Greek Catholic Orthodox, and that he had nothing to do with the Pope of Rome. I did not see any difference between his services and those I had been accustomed to at home. I afterwards saw him with the Roman Catholic bishop beside him at the altar. Father Dymytrow told us that we must not take anything from the Roman Catholic Church, and that, if we did, he would leave us. I saw Bishop Legal there only three times, one of them being his visit to Father Dymytrow. I only attended one service at which he was present, viz., that with Father Dymytrow. On another occasion—I was never present when Bishop Legal held service in the Latin rite. I never confessed to him. My son Wasyl acted as his interpreter. The bishop once, when at my place, performed a marriage in his tent, but I was not present at the ceremony.

I never confessed to a Roman Catholic priest since coming to this country. When Father Dymytrow came the second time I still supposed that he was a priest of the same Church as Father Alexandroff. I was present when the cemetery was consecrated. I do not remember whether it was during his first or second visit I collected the money for the cemetery. Sachman and I collected $5.00 for it. I twice attended Father Alexandroff's services, once at Nymyrski's and another time at a place near Sachman's on lands selected for church purposes. I do not remember what interval there was between them.

Q. What is your reason for wanting to get rid of Father Zacklynski and have Father Korchinski? *A.* Because when Father Zacklynski first came he told us that he belonged to the Greek Catholic Church, and afterwards he wanted us to borrow $300.00 from the Roman Catholic bishop.

Q. Was that your reason? *A.* I had a whole lot more reasons.

[Mr. MacDonald calls the attention of the Witness to the fact that when examined for discovery he gave his reasons for wanting to change priests and that he did not then give as a reason the fact that Father Zacklynski wanted us to borrow the money from the Roman Catholic bishop.

Witness: I did not then remember very well and I do not remember very well now.

Mr. MacDonald calls the attention of the Witness to the fact that during that examination Witness stated as follows:—"I was good friends with him up "to the time that I found that he did not do his work right. He told us to get "some beer and music at my house on the day of the consecration of the church. "He allowed us to work on Sunday, called meetings every Sunday, that I never "saw meetings before on Sunday, that Mr. Knowlton made a present of $4.00 to the "church, and Father Zacklynski took it, that Feder Melnyk told him that he was "playing cards with the girls up to 12 o'clock at night, that Michailo Propapchack

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"brought his child to be baptised and Father Zacklynski said, "Put up your dollar "first."

Witness: I made these statements. I was present at Danczuk's and saw Stephura and Karpetz write a piece of paper. Later in the same day at Michael Melnyk's Stephura wrote my name on a piece of paper. I told him to sign it. They told me that they were writing for a Russian priest. I did not hear any paper read at Danczuk's that day. I knew it was Father Zacklynski they were writing for. I was present when the cash box was taken from Petro Melnyk's house. Later that day we went to Feder Melnyk's after leaving the cash box at Feniak's. We met Father Korchinski. I did not expect to meet him there. I went a day or two later to the church at Wostok and there, before Father Korchinski, I renounced the Pope of Rome and his errors. I had renounced the Pope in Galicia. I never heard Father Zacklynski accuse the Trustees of having done anything wrong with the Church moneys, but I heard that he had accused them. I don't remember that there was any trouble with him up to the time I heard that report. Pasemko, Petro Melnyk and Const. Parr came to me and asked me for the key of the church and said I must apologise to Father Zacklynski, otherwise I must go to gaol. I then showed him the deed of the land. We then had a discussion. I ultimately refused to give up the key. I kept the church locked and prevented Father Zacklynski holding service there.

Re-examination.

Re-examination. To Mr. Short:

Father Dymytrow told us also that if we took anything from the Roman Catholic bishop, because if we did, it would come out of our side. I now say that it was Father Tymkiewicz and not Father Dymytrow who told us that we must not take anything from the Roman Catholic bishop.

No. 28. Iwan Pylypiw. Examination.

Iwan Pylypiw. To Mr. Short:

I am one of the Defendants. I came to this country from Galicia ten years ago next July, and settled in what is now known as Star. The only other Galicians who were in that neighbourhood when I came were Nikola Techkowski and Anton Paisch. They were the only Galicians settled in the Territories before me. I came to the Territories alone. At the time Father Dymytrow first came there were about 30 families of Galicians around Star. There were a number of Bukowinians settled east of Nymyrski's at that time. About 50 or 60 families in all. I do not remember whether any more Galicians arrived between the visits of Father Dymytrow and Fathers Kamneff and Alexandroff. When new arrivals of the Galicians reached here they usually put up for a time with some of the older settlers. Before Father Dymytrow first came we had a meeting at Halkow's about building a church, I and Wasyl Feniak, the Defendants Melnyk and Polushie, Nikola Melnyk, Petro Melnyk, Techkowski and others. I think Spaczynski was one of those present. Anton Sowka, who was present, said that he would write somewhere to the States and get us a priest of the Greek Catholic Orthodox Church—"Graeco Katolesky Pravoslavni." We decided that we would go around and collect money and see about getting the land, that is, whether we would have to

give it from our own farms or whether we could get it from the Government. When Father Dymytrow came, we spoke about building a church. He suggested that we should have a church, but he also told us that we were then too poor to build one. We were all poor at that time. He told us that we would be better off shortly, and that we might then build a church. Before I came here to settle I had paid a visit to Manitoba as a delegate. I returned to Galicia from Manitoba. I was put in gaol when I returned to Galicia. I understood that it was because I had said that America was a better country to live in than Galicia. I was tried. I was sentenced to one month's imprisonment, and was told that I should not tell people to come to Canada. This was at my former home in Galicia. I was a farmer there. Sometimes I worked for others. Before I was married I went to Bukowinia. I attended church there. The service was the same as in my own church at Nybylu, where I lived in Galicia. I did not find any difference between them. Sometimes there were 30 or 40 from Nybylu working in Bukowinia. Michailo Romaniuk was one of them. At the meeting at Halkow's we were all agreed that the church should be Greek Catholic Orthodox. I remember Fathers Kamneff and Alexandroff coming to the settlement. I think they came about two months after Father Dymytrow left. I attended one of their services at Nymyrski's. There were a lot there. All the Galicians were there, except those that did not know of the services or were sick. A number confessed at that service. I did not count them. The service lasted two or two and a half hours. After the services the priests sat at a table and the people crowded around them, asking what they should do about the church. They advised us to pick out C.P.R. lands for a site, and the Government would arrange an exchange. They also told us that the Government would give us the logs for the church. We disagreed at that meeting about its location. The people living near Nymyrski's wanted the church built there, while we wanted it at Star. Father Alexandroff then said, "If you cannot agree you can build "two churches, and later on perhaps three." We then decided that we would build our church at Star and let the people at Nymyrski's build their own there. At every meeting we had we decided that our church was to be Greek Catholic Orthodox. A few days after that service we met together and decided to build a church at the place where the church in question now is. We then wrote the names of about thirty-six families and sent it to the Government. We were assured that we would get the land we applied for, and we proceeded to fence it for a cemetery. We then held a meeting to decide upon getting logs out. We got a permit. Dymbrowski gave us some logs. We got the permit in the fall of the year that Fathers Alexandroff and Kamneff were there. We started to haul a few loads of logs when Father Dymytrow came the second time. We did not do any building at that time.

Witness stands aside.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No. 29. Rev. Michael Skibinsky.

Rev. Michael Skibinsky.

[John Schlamp sworn as interpreter Russian—English.]

To Mr. Short: I am at present a missionary priest at Wostok, of the Greek Church. I minister among the Galicians and Bukowinians in that locality. The full name of my Church is "The Eastern Orthodox Russian Greek Catholic Church." It is usually known as "The Orthodox Greek Catholic Church," or "The Greek Catholic Church," or "The Greek Church," or "Russian Orthodox Church." I was born in Russian Poland. The people of Russian Poland are the same race as the people of Galicia, and they are of the Greek Catholic Church. Before annexation to Russia they were what is known as Uniates. They are called sometimes "Uniates," sometimes "Greek Uniates" and sometimes "Uniates of the Greek "rite." I never heard them called by any other name. I have been at Wostok since 15th May last. I have met a large number of Galicians in that neighbourhood since that time. There is a difference between the Uniate Church and my own.

Cross-examination.

Cross-examination. To Mr. MacDonald:

I was born in the province of Lubin, which adjoins Galicia on the north. My birthplace was about 30 or 40 miles from Galicia. The Uniate Church ceased to exist in Russian Poland in 1875, which was two years before I was born. I have never been in Galicia. I was ordained priest at San Francisco. My certificate of ordination is at Wostok. I do* remember how my Church is named in it except that the word "Eastern" appears in it. The people of the province I was born in are Little Russians. The greater part of my congregation at Wostok are Bukowinians who belonged in Bukowina to the Orthodox Bukowinian Church. There are Uniates in Bukowina who are under the Archbishop of Lemberg.

*Sic. Qy. not.

Re-examination.

Re-examination. To Mr. Short:

I have never been in Bukowina. I am therefore not certain about there being any Uniates in Bukowina.

Iwan Pylypiw resuming.

Iwan Pylypiw, resuming. To Mr. Short:

Bishop Legal visited our parish during Father Dymytrow's second visit. He did not speak to us, but he spoke to Father Dymytrow, who told us that the bishop was asking why we had left our own religion. This was at a service at the school house on a holiday. Among those present were Hawrylenko, Iwan Sachman, Petro Melnyk, Spaczynski, Techkowski and Polushie. Father Dymytrow also told us on that occasion that the bishop said that he would give us nails, shingles, doors and windows, but Father Dymytrow told us that we should sign anything to the bishop. We never received any assistance from the bishop. I think that it was in the following year when Father Tymkiewicz came. Just before he came we got word from the Government that the French bishop had entered for the land for our church. We had a meeting and decided to try and get the lands out of his hands. Father Tymkiewicz had arrived and was present at that

*Sic.

meeting. He told us that we should try and get the land back from under the Roman rule. We got the land back. Father Tymkiewicz told us not to take a single thing from the French bishop, that he himself had been offered $50.00 per month and a horse and rig to drive around with, but that he had refused to accept it. He remained with us for about five months that summer. After he left we were a long time without a priest. There was a Polish priest out there, but we did not go to hear him. Father Alexandroff then came with Father Kamneff and remained about a week.

Witness stands aside.

No. 30.
John Fahr.
Examination.

John Fahr.

[John Schlamp sworn interpreter German—English.]

To Mr. Short: I am a German and a Lutheran. I came here from Galicia about nine months ago. The only church I knew there was the "Græco Ruthenisch "Church." They were all of one race and they all belonged to the same church. There are also Polish churches in Galicia. There are lots of German churches there. The Greek Ruthenian Church is not, to my knowledge, known by any other name. The Polish church is known as the Roman Catholic Church. I never heard the word "Orthodox" used in connection with the name of any church in Galicia. I never heard of any Orthodox Church in Galicia. I never heard of a Uniates Church or a "Pravoslavni" Church in Galicia.

To Mr. MacDonald:

Cross-examination.

In Galicia all the Ruthenians belonged to one church and all the Poles to another. The Germans belonged to different churches.

Iwan Pylypiw resuming.

Iwan Pylipiw, resuming. (Wagner, Interpreter.) To Mr. Short:

I now say that Fathers Alexandroff and Kamneff were at Wostok about the time Father Tymkiewicz was at Star. I do not remember that they were at Wostok at any time after he left Star. After Father Tymkiewicz left we had a meeting about getting a priest. It was held at Danczuk's place, about 10 miles from the church in question. Danczuk's house is about three or four miles south of the Wostok church. The Wostok church is about six miles north-easterly from the church in question. Among those present at the meeting were the three lay Defendants and other members of the Star Congregation, also some members of the Wostok congregation. Among the latter were Joseph Proczinski, also a son-in-law of Birks, also Iwan Kudrik. Both congregations wanted to get the same priest. I do not remember whether there were any Bukowinians present. There was a big crowd there. We figured up that with the Bukowinians there would be about 300 families and that we could therefore raise about $600 or $700 a year for the priest and that he could attend to the whole outfit, including the Bukowinians. There was considerable discussion about what should be paid the

RECORD.

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Defendants' Evidence.

Iwan Pylypiw —*continued.*

priest. Some wanted the amount fixed at $3.00 per family, others wanted it fixed at $2.00. Others did not want to give anything. After the matter was discussed, Spaczinski and Karpetz drew up a document which I and a number of others signed. Exhibit D is signed by me, but I am not sure that is the document I signed at that meeting. It is written in Russian and I cannot read Russian.

[The interpreter reads for Witness Exhibit E, being the admitted translation of Exhibit D.]

Q. Did you ever hear that document read before ?

[Mr. MacDonald objects to any evidence by the Witness tending to show that he did not understand the words of Exhibit D, on the ground that he is a literate person and must therefore be presumed to understand the contents. I rule that such evidence is admissible under the circumstances shown.]

Parts of it were read at that meeting, less than one quarter of it was read. I did not hear that part which states that we were sending money for a ticket. Whilst the document was being written—after a little was written—they started to quarrel. Afterwards Spaczinski said, " We have written down just what you " want. Stop quarrelling and come and sign." The document was lying on the table at the time when Spaczinski said this. He did not read out the document to the meeting, nor did I hear anyone else read it. I did not state on my examination for discovery that Karpetz read the document. If it is so stated in my depositions it is not correct. Mr. Mohr interpreted for me at that examination and I said the same to him about it as I have said here to-day. Among other parts of the Document D I did not hear read were the dates (there was snow on the ground at the date of the meeting), nor the words " the settlement is scattered," nor the words " we are Uniates." Nothing was said about our being in certain townships or ranges. I heard nothing said or read about there being 30 or 40 families of Uniates among the Bukowinians. I could not have heard it read or stated that our post office is three miles from the church, because I know that it is five miles from it. I heard nothing about the stipend being paid half-yearly. I heard it stated that we had some church books. I heard nothing said or read about the priest's house being built or intended to be built 100 paces from the church nor about there being plenty of forest. Spaczinski said to us, " Perhaps " he will come for Easter." At the time of that meeting the Wostok church was not quite finished. It was finished during the following summer when Father Korchinski came. He held services in it before the roof was on. I was not present at any of these services. I attended some of his services in the dwelling house. I was at one service in the church before it was finished. When Father Zacklynski came, our church was the only one that was finished. We all attended Father Zacklynski's services, including the Bukowinians. The Nymyrskis, who belonged to the Wostok congregation, also attended. Among the leading members of the Wostok congregation were Constantine and Fedor Nymyrski, Lakusta and Prochinski. Among the members of that congregation who attended Father Zacklynski's services throughout the summer were Hawrylenk, Maceborski and quite a few others. Denczuk belonged to our Congregation but he sometimes

attended the Wostok church. Some of those who attended his services were from the east of Wostok church, some being Bukowinians. Some of them lived 12 or 15 miles from the church.

[Schlamp Interpreter.]

All I know about Danczuk being a member of our Congregation is that he used to attend Father Zacklynski's services. He did not contribute anything towards the erection of the church. I have seen him at Father Korchinski's services. I saw Spaczinski at the first service held by Fathers Kamneff and Alexandroff. He got a book from the latter. Spaczinski stated that he had not a prayer book and Father Alexandroff gave him one. Spaczinski said to him, "I am just as good a Russian as you are." He said that he wanted the book so that he could give a little teaching to the people on Sundays. At that service Spaczinski got a pencil and a piece of paper from Alexandroff and took down the names of those present and he afterwards went around the settlement and got other names. Father Alexandroff told him to take down the names to see whether there was enough to send to the bishop to get a priest. No one signed the paper. I never went to Spaczinski to get that paper. He never said in my hearing that he had destroyed it. I never stated to him, nor did I hear anyone else state to him, that it was good that he had destroyed it as we wanted to stay with our own Church. At the time of the first service of Fathers Kamneff and Alexandroff I knew that they belonged to the Greek Catholic Church not under Rome. They told us that at that service. When we got money in for the church we used to get Spaczinski to write it down. The Defendant Melnyk bought a book at the time Father Tymkiewicz left. I never saw anyone writing in the book. I saw it before anything was written in it. I saw them adding up some figures in it when Father Zacklynski was there. This was at Feder Melnyk's place. They were counting up what money was spent and what was left. Father Zacklynski had borrowed some of the church money, so they were going over the account to see how the church affairs were. They were good friends at the time. They wanted to find whether any children or any person had shaken any money out of the box, as it was easy to do. It was hinted that some of the children had done this. I did not see any writing done in the book at that time. All the calculations were made on another piece of paper. I never saw the book from the time I saw it as a blank book up to the time I saw it on that occasion at Fedor Melnyk's. Spaczinski kept it at home. I never saw Spaczinski making entries on a card before the book was bought. The accounts were kept on small pieces of paper. Sometimes more than one entry of collections would be made on the same piece. I never saw Spaczinski transferring any entries from a card to the book. He never did in my presence. I never read the entries in the book Exhibit A. I can read Russian written in Polish letters. I could read Exhibit D, but it would take me two days to make it out. It is written in Russian letters. There are some letters which are the same both in Polish and in Russian.

To Mr. MacDonald:

Philip Mohr was the interpreter at my examination. I do not remember

Cross-examination.

RECORD.

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Defendants' Evidence.

Iwan Pylypiw — *continued.*

whether Philip Wagner was present or whether he and Mohr discussed from time to time as to the proper translation. I now say that Wagner was present. I cannot remember whether it was he who read the depositions over to me. I told the examiner that Spaczinski had written the document Exhibit D. I could not tell whether Spaczinski read from the paper Exhibit D, or spoke it out of his own head. I knew before I went to the meeting that it was for the purpose of writing a letter to Rev. Father Zacklynski. Fathers Alexandroff and Kamneff were in the settlement between the two visits of Father Dymytrow. During his first visit he held a meeting at the school house at which I was present. I cannot remember whether Bishop Legal was at that service. I remember one service held by Father Dymytrow in the school house, at which Bishop Legal was present, but I think that was in the fall. The bishop may have worn his priestly garments, but I cannot remember. He sat at the altar during Mass, and at the conclusion he said something and did something with his hands, but I did not understand him. Father Dymytrow consecrated the cemetery on his second visit. I did not attend a meeting in the school house, held by Bishop Legal before Father Dymytrow's first visit, at which he read Mass. I attended, I think, three services held by Father Dymytrow during his first visit. I was satisfied with his services. He talked our language. I never heard any question raised as to what Church he belonged. I fully believed him to be a priest of the same Church I belonged to in Galicia. We would have been glad to have him remain with us if we could have given him a keeping. When Fathers Kamneff and Alexandroff first came they held a meeting at Nymyrski's. Word was sent all around about the meeting. I did not speak with either of them. I was at only one service held by them during all their visits. I did not confess to either of them. Neither did I take communion from them. I remember their coming to the settlement for two years and perhaps three. I did not go to their services then because we had Father Tymkiewicz. I cannot remember whether they visited any in our settlement during their second or third visits. I was well satisfied with Father Tymkiewicz, and I regularly attended his services. At his first service, Father Alexandroff, he said to us, "I am a Rusyn like yourselves." I saw no difference between the services of Fathers Kamneff and Alexandroff and those I was accustomed to in Galicia. I have never been in Russia. In Galicia all the Russian people went to the same church. The Poles in Galicia went to the Roman Catholic church. The service at the churches I attended in Bukowina was in Russian, the same as my own church in Galicia. It was Father Tymkiewicz who first pointed out to us that we should not have our land in the name of the French bishop. The Defendant Polushie and Melnyk and Feniak, at his request, accompanied him to town to get the matter fixed. A second trip becoming necessary and Feniak being ill, I was selected to go in his place. The Congregation approved of our acting as Trustees for the land. When I came in with the others we did not see the others. I think there was a French priest with us at the Land Office when we got the matter arranged. In my examination for discovery I stated that the assistant bishop was with us at the Land Office and agreed to the change being made. We asked him to consent to the change and he did so. That is what I meant by saying, upon my examination, that we made him agree. At a meeting subsequent to the one at which Exhibit D was written, another meeting was held

at which another letter to Father Zacklynski was written and some money was sent with it. I subscribed $1.00 towards the amount then forwarded him. I was one of those who came to town to meet Father Zacklynski.

At the meeting at which Father Korchinski was asked to be our priest, I did not, nor did either of the other lay Defendants in my hearing, say that Father Zacklynski when he first came to the country said that he must report to the Bishop of St. Albert. I went to Father Zacklynski's first service. It was at that service that the church which was then finished was consecrated. That was about two years after Father Tymkiewicz left. During those two years I had not attended any religious services except those that Spaczinski held. I heard that time that there was one service held at the church at Wostok, but I was not there. I went regularly to Father Zacklynski's services. Up to the month of December after he came. I had no difficulty or trouble with him. I never confessed to or took communion from him. I took communion from and confessed to Father Tymkiewicz. I afterwards took communion from Father Korchinski. The trouble with Father Zacklynski began about the church money. I remember the meeting at which he appointed provisors. After that meeting the old Trustees, the lay Defendants, gave the key of the cash box to Podruski. Two or three weeks after the trouble began I asked Father Zacklynski to baptise my child. I did not then consider him my priest. I asked him to baptise it because it was sick. I expected it to die and it did not make any difference who baptised it. There was good sleighing at that time. Father Korchinski was then at Wostok, six miles away, and I knew him, having met him at Lopochinski's before that. When Father Zacklynski refused I got Father Korchinski. I asked Father Zacklynski first because I saw him passing near my house. I never had any quarrel with Father Zacklynski up to the time he refused to baptise my child. When I asked him to do so, he replied, " I don't belong to you any more." The next day I went to Father Korchinski and brought him over to baptise the child. On the evening of that day we had a meeting at Fedor Melnyk's, at which we asked him to be our priest. The day Father Zacklynski refused to baptise the child, and after his refusal, I talked with some others about getting another priest. I talked it over with the Defendants Melnyk and Polushie, Wasyl Feniak, Fedor Melnyk, Nikola Melnyk, Fedor Melnyk, jr., and Petro Melnyk. I cannot swear that I ever talked to Petro Melnyk about it. All those whose names I have mentioned were present at the meeting at which Father Korchinski was present. Techkowski and Bardowski also were at the meeting. At the meeting Father Korchinski told us that we could not transfer the church to him because it was a Roman Uniate Church. He also said, " I do not know how it is in this country, " but in the United States, if there were 300 members of a congregation and 299 " changed their religion, the one remaining unchanged would hold the church " property." It is not true that he suggested that we should take the opinion of or consult the major at the Fort. After that meeting no meeting was ever called to discuss the appointment of Father Korchinski, but a man was sent around to take the names of those who were willing to support his church. Wasyl Polushie, a son of the Defendant Polushie, was the one who went around. He got about 40 names in all of heads of families and young who held lands of their own. I do not know who the 40 were. I only heard it said that there were that number.

RECORD.

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Defendants' Evidence.

Iwan Pylypiw —*continued.*

So far as I can remember those who joined his church before the commencement of this suit are the Defendant Melnyk, his son Fedor, Nikolai Melnyk, Fedor Melnyk, the Defendant Polushie, his son Wasyl, Stephan Chichak, Propakchak, Matzeborski, Kuziak, Sachman, Oleksa, Tymczak, Oleksa Czornay, Nikola Hrhorashczak, Nikola Gregorasczuk. There were others, but I cannot remember their names. Maceborski lives two miles from our church. He attended some of Father Tymkiewicz, but I cannot say that he ever attended a service of Father Korchinski. I have seen the two Nymyrskis, Sachman, Halkow and Lakusta at Father Zacklynski's services. Sachman helped to cut some logs for our church and gave some money for it. I don't know that Czornay ever attended Father Zacklynski's services. I came from Nybylu. I knew Petro Melnyk and a lot of others now here who side with the Plaintiffs in this suit. I never had any dispute in Galicia about religious matters. All of the "Rusny" there attended the one church. The Poles attended a different church. I used to hear in our services a prayer for the Pope. When there I only heard of one church among our people, that is the "Ruska" Church. I never heard the name "Uniate Church" until I came to America, until Father Korchinski told us so at the meeting. I never heard that our Church was the Uniate Church. Our Church in Galicia was called the "Ruska Church," but the priest in the service made use of the word "Pravoslavni." At the meeting at Halkow's we decided to build a church that should not be under Rome. In Galicia we were under Rome. I was present at the service where Bishop Legal promised to furnish lumber and shingles. I would have been willing to accept his offer if Father Dymytrow had not warned us against it. When we were getting out logs for the church Father Dymytrow went out to the woods with us. Jusko and Fedor Prochinski belong to the Orthodox Church at Wostok. The other brothers still belong to the Uniate Church. After the meeting at which Father Korchinski was present I went to his church at Wostok and before the altar there I adjured my allegiance to the Pope and the errors of the Church of Rome. I saw Michailo Melnyk sign Exhibit D.

Re-examination.

Re-examination. To Mr. Short:

Before Father Tymkiewicz came, the Defendants Melnyk and Polushie and Wasyl Feniak went to Edmonton to enter for the church lands. It was on their return that I first learned that the land was held by the bishop. We then held a meeting and decided that we could not leave it in his hands. The same three came again to Edmonton about the matter. I think that we had one meeting about it before Father Tymkiewicz came and one after he came. I now say that it was on the third trip to Edmonton about getting the land from the bishop that I went in Feniak's place. We had no trouble in getting the title changed. On the first trip the bishop was away. On the second they found that his entry was cancelled, on the third we made the entry ourselves. When we came to Edmonton to meet Father Zacklynski we met him at Strathcona Station and we went to the hotel. He and Wasyl Polushie got drunk there. We went off home and left Father Zacklynski here with Philip Wagner. It was not for a long time after he came, about two or three months after, that I first heard that he recognised the Roman Catholic bishop as his superior. It was upon the trial before Justice Holmes and McLean of a charge preferred by Zacklynski against Wasyl Feniak

that I first heard that the former was under the French bishop. That was after Christmas.

At the time of the meeting at Feder Melnyk's house at which Father Korchinski was present, we showed him our certificate of title to the church. It was before we showed it to him that he said that we would not transfer the church to him because it was a Roman Uniate church. I cannot state with certainty whether it was before or after we showed him the certificate that he told us what the law in the United States was as to the transfer of churches. After we showed him the certificate he told us that his religion was the same as that appearing in the certificate. The man was sent around after that meeting for the purpose of ascertaining what people wanted Father Korchinski as their priest. Those who first took part in getting the Congregation together and building the church so far as I remember were :—Jehosophat Lapichinski, Wasyl Lupochinski, Petro Kenash, Fedor Kenash, Iwan Sachman, Iwan Tymniak, Ilko Seniatovisch, Nilola Techkowski, Petro Melnyk, the Defendant Polushie, Wasyl Feniak, Feder Melnyk, Iwan Pyplypiw, the Defendant Melnyk, Nikloa Melnyk, Dymytrow Maceborski, Wasyl Pisckjavitz, Olexa Chorney, Hnat Somborski, Petro Roskos Feder Rudyk, Iwan Halkow, Petro Andruchiw, Iwan Lakusta, Feder Nymyrski, Constantine Nymyrski, Iwan Danczuk, Lewko Prochinski, Jusko Prochinski, Metro Zachalko. These are all I can remember. When the French bishop was at the school house service Father Dymytrow told us to take all we could get from him, but not to sign any paper. Between the time Father Dymytrow left and the time Father Tymkiewicz, we did not go to the bishop for anything. We did not go to him at any time. When Father Dymytrow went to the woods with us to get logs for the church, he took a gun and went looking around.

Re-cross-examination. To Mr. MacDonald :

I do not know that the Nymyrskis gave any money to the church, but I heard that they gave 30c. each as a present. I cannot swear that any one of these I have named, excepting myself, gave any money to it. I have no reason to doubt whether the entries in Exhibit D are correct. Before Father Dymytrow first came to the country, about two or three months before, there was a meeting at Halkow's at which $6.00 was collected to get a place for a cemetery and to pay the interpreter for getting it. The money was left either with Nymyrski or Halkow. I do not know what eventually became of it.

Stefan Chichak. (Schlamp, Interpreter.) To Mr. Short :

I came here from Nybylu 10 years ago. I am a Russian and I belong to the Russian Church. I was a singer in that church at Nybylu. The singing books we used in that church were from the Russian country. I know this because they stated that they were published in Kiev. The priest told us to put the books away if the Metropolitan or a bishop came.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No. 32. Iwan Sachman. Examination.

Cross-examination. To Mr. MacDonald:

When the bishop came, we used the old big books that were in use before we got the Russian books. The hymns were the same in both.

Iwan Sachman. To Mr. Short:

I came here from Galicia seven years ago and settled near the church in question. I remember Father Dymytrow's first visit. I have attended his services. I was at the meeting at Halkow's, which was first held before that at which we decided to build a church. The church we decided to build was the "Greek Catholic Provoslavni." All the people for about six or seven miles around Halkow's were present. Those I remember were: Iwan Dembrowski, Wasyl Lapichinski, Jesophat Lupchinski, Wasyl Nikephoruk, Fedor Kenash, Petro Kenash, Wasyl Paisch, the Defendant Pylypiw, the Defendant Polushie, Fedor Melnyk, Wasyl Feniak, Petro Melnyk, Nikola Techkowski, Ilko Sennatowicz, Maceborski, Feder and Constantine Nymyrski. I can remember the names of about 30 who were present, but there were more than that there. We decided to put the church near Fedor Melnyk's place, which, at that time, was about the centre of the settlement. A collection was taken up for a start, each giving about 25c. or 30c. Those present who had money gave some. It was to defray expenses of making the land entry. I was at three of Father Dymytrow's services during his first visit. We talked about building during that visit, but we came to no conclusion. I went to hear Father Kamneff and Father Alexandroff at their first service, but there was no business there. Before they came we had selected a site for our church, which was the place where the church in question was built. At that service Father Alexandroff explained that both the Orthodox and the Uniate Church were both Eastern Churches. I gave 40c. towards the church, helped to fence the cemetery, gave some logs for the church foundation and helped to break stone for the foundation. I was three days in the bush cutting logs for the church. All this was before Father Alexandroff's first visit—a few weeks before. I attended services of Fathers Tymkiewicz and Zacklynski, and afterwards those of Father Korchinski. I live five miles from the church in question and twelve miles from the Wostok church. There is now a Greek Catholic Orthodox church half a mile from where I live, which I attend. Father Skebinski is the priest in charge of it.

Cross-examination.

Cross-examination. To Mr. MacDonald:

I attended the same church in Galicia as all the other Russians in Galicia. I never heard of any but one church among them. I came from near Lemberg. We called our church the Greek Catholic Orthodox Church. Our priest always called us Orthodox Christians. The word "orthodox" "Pravoslavoni," was used in a prayer or blessing in the service in the term, "All Orthodox Christians." That is why we call our Church "Orthodox." At the meeting at Halkow's we decided to build the same kind of church at Wostok, because we had a letter from the bishop at San Francisco, stating that he would send us a priest. Sowka had written to the bishop, and he addressed his reply to him and Halkow. The letter to the bishop was addressed to Bishop (giving name), San Francisco. His answer

merely told us that if we would build a church he would send us a priest. Up to that time Sowka wrote the letter, there had been no priest of any kind in our settlement.

Q. How then was it that you decided to change your religion? *A.* There is no change in the Russian Church. I thought that the church we were getting was the same church that I belonged to in Galicia. At Father Alexandroff's first service I heard him say, "I am a 'Rusyn,' the "same as you." I confessed to Father Alexandroff, thinking that he was a priest of my Church. I had previously attended three services of Father Dymytrow. I saw Bishop Legal at one of these services. He sat beside the table used as an altar. I left before the close of the service. I was satisfied with Father Dymytrow. I thought during that summer that Father Dymytrow and Father Alexandroff were both priests of the Greek Catholic Orthodox Church. I knew of no difference between their religions. I never confessed to Father Tymkiewicz; I cannot remember that I ever attended his services. I never confessed to Father Zacklynski. I attended two of his services. Both were in the early part of his stay. I never agreed to take Father Zacklynski as my priest. The church was finished shortly before he came. I gave something every year to the church in question.

I confessed to Father Korchinski a month or two after he first came here. At that time Father Zacklynski had been locked out of the church in question. At the time I confessed to him he told us that we had belonged to the Pope in the old country, but here we were in a free country, and that we need not belong to the Pope unless we liked. Before confessing to me, I, before the altar of his church, renounced the Pope and his errors.

Re-examination. To Mr. Short:

Re-examination.

When Father Alexandroff at his first meeting said, "I am a Rusyn, the same "as you," he also told us that he was "the same priest as our Church." He also, on that occasion, told us that in Galicia we belonged under Rome, and that here we could do as we liked—that is, if we had joined another Church in our country, we would have been punished. He said that his Church was the same as ours, except that the only difference is that we would not belong to Rome. He said that his Church was the Greek Catholic Orthodox. I confessed to him the first service he held.

Wasyl Polushie. (Evidence given in English.) To Mr. Short:

No. 33. Wasyl Polushie. Examination.

I am a son of Defendant Polushie. The meeting at Halkow's about organising was in the winter, a few months before Father Dymytrow came. We met to select a place for the cemetery. I was at the meeting. We selected the place where the church now is. The chief talker at the meeting was Anton Sowka. He told us that we were now in a free country and we could have whatever church we liked. We decided to have a church that had nothing to do with Rome. We talked about getting a priest, and decided to write a letter to the bishop at San Francisco to get his advice. Several meetings were held after that. At the first meeting we talked about appointing Trustees to look after things.

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Defendants' Evidence.

No. 33. Wasyl Polushie —*continued.*

Constantine Nymyrski, Iwan Lakusta and Michailo Melnyk were picked upon. The second meeting was also held at Halkow's. At that meeting the answer of the bishop at San Francisco was read. We decided that there were not enough of us at that time to get a grant of land. Shortly after this some more people came to the settlement, and we made a list of the settlers and decided to apply for a grant of land. There were three meetings before Father Dymytrow. At a meeting before he came, new Trustees were appointed. Trustees were appointed three times before he came. The second Trustees were Sachman, Feniak and the Defendant Melnyk. The third Trustees appointed were the Defendants Polushie and Melnyk and Feniak. Nymyrski and Lakusta went out because they were too far away. Sachman went out because had not time to attend to the business. Father Dymytrow's first visit was in the spring. He remained there only a short time. I think there were no meetings during that visit. He held one or two services in the school house. Shortly after he left Fathers Alexandroff and Kamneff came. I attended their first service. It was in the open air at Nymyrski's place. All the Galicians settled in that part of the country were there. They spoke to the people. I did hear what they said. Shortly after that our people started to work to get out the logs for the church and stone for the foundation. Mr. Belcher gave us 30 logs; Sachman also gave us some. It took us about three years to get out the logs. We got a permit from the Government for logs. We held a meeting at which it was decided to apply for one. The meeting was at Feder Melnyk's. I don't know whether a letter was written about it, or whether anyone went to Edmonton about it. We had a letter from the Land Office about it. The Defendant Melnyk and Feder Melnyk and either my father Iwan Pylypiw went to Mr. McGall, who lived near there, to get the letter read over and answered. I went with them. Mr. Belcher was there at the time, and he read the letter and explained it to me. He then asked us what kind of church we wanted the logs for.

[Mr. MacDonald objects to this last statement on the ground that it is an attempt to get in secondary evidence of a document which has been tendered by Defendants as evidence and refused. I rule that the evidence is admissible.]

I was present on that occasion as interpreter for the Trustees. Looking at document marked X 11 (Exhibit 9) I say that I can read the printed portion, but not written portion of it. I know Kenneth Morrison. He worked for Mr. McGall, but I think he was not present at that time. I think the letter from the land agent was a form of application for a permit. Mr. Belcher read it and I interpreted it. When he asked what kind of church they wanted it for, I asked the Trustees, and they told me to tell him that it was the same kind of church that Fathers Alexandroff and Kamneff belonged to. The document was then filled in by Mr. Belcher and completed, and I mailed it to Edmonton. The Trustees were asked to sign the document and they did sign it. We started to get out the logs shortly after Father Alexandroff came the first time. We were working at it when Father Dymytrow came the second time. He came out to the woods where we were getting the logs. He did not work. He had a gun

with him and was shooting while we worked. Father Tymkiewicz came in the following spring. When he came the walls of the church were partly up. We did not finish it while he was there. I do not know Bishop Legal. I know that once a Roman Catholic bishop or priest spent a night at my father's place. At another time he camped near the house and when there he married a Polish couple. I also saw him at a service held by Father Dymytrow in the school house. He sat one side of the desk which was used as an altar. He sat at a desk. I was standing beside him. Another person, I do not now remember whom, sat beside him. I did not see him take any part in the service. I did not hear him say anything to the Congregation. A collection was taken up at every service. At Christmas they go round from house singing songs and take up a collection. There were special collections beside this. Spaczynski took up the collections, put the money into the cash box and took memoranda of the amounts on slips of paper. Some moneys were paid in of which he did not get any account. I never saw the book Exhibit A, until I saw it in Court here. Fedor Melnyk never had a pen or ink in his house until Father Zacklynski came. He used to come to my house to get a pen and ink when he wanted to use one. He cannot read or write. Before Father Zacklynski came we wrote for a priest many times. I was at the meeting at Danczuk's place when we wrote for a priest. He lives nine miles south of my father's place. My father lives on N.W. $\frac{1}{4}$-22-56-19-4; Petro Melnyk lives on N.E. $\frac{1}{4}$ of same section, the Defendant Pylypiw on the S.W. $\frac{1}{4}$ and Feniak the S.E. $\frac{1}{4}$ of same section. Techkowski lives on N.E. $\frac{1}{4}$ Sec. 28, Petro Melnyk on S.E. $\frac{1}{4}$ Sec. 28; the Defendant Melnyk lives on N.E. $\frac{1}{4}$ Sec. 2 in the same township. The church in question is on S.E. $\frac{1}{4}$-27 in the same township. It was in the middle of the settlement at the time it was built. The Wostok church was started about a year after ours. Since then another church was built east of Wostok among the Bukowinians and there are now two others north-west of ours, one not being quite finished.

I was at the meeting at Danczuk's at which the letter was written to Father Zacklynski. It was held there because it was a central place for our people, the Wostok people, and those further east, to meet. At the meeting there was quite a row as some people were disputing about the priest's salary. I saw some people writing, but I cannot tell who wrote the letter. I did not hear it read. I do not remember whether I saw anyone write their names. I heard some one call on the others to come up and sign a paper. I did not see my father go up to the table to sign it. He and I left together. I was one of those who came in to meet Father Zacklynski on his arrival. I saw him at Strathcona on the night of his arrival. I drove him to Edmonton next day and left him with Philip Wagner and went home. I was at the meeting in Fedor Melnyk's house at which Father Korchinski was present. During the meeting I went to my father's to get the certificate of title. When I took it to the meeting my father showed it to Father Korchinski, who looked at it, and said, "Well this is my church and you are my people." Before I went for the certificate Father Korchinski had called them Uniates and they said they were not. After I got back they asked him to come and be their priest and he said he would if they would write a letter and sign a list to show how many there were of them. The Trustees asked me to go round and ask the people if they wanted Father Korchinski as their priest. I went to quite a few places.

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Defendants' Evidence.

No. 33. Wasyl Polushie —*continued.*

About from 40 to 45 heads of families and grown up men signed the list I had. The Trustees wrote a letter to Father Korchinski and signed their names to it. The others signed their names on the back and when that was filled up the remaining names were signed to a piece of paper attached to it. No person that I went to refused to sign. Looking at the list Exhibit C I say that only 19 of those whose names appear thereon signed the list which I carried around with me. About 20 or 25 others signed it. Some of these whose names appear in Exhibit C are at long distances from the church, some 20, some 30 and some 48 miles from it. Those who live at those distances are not members of the Congregation of the church in question. That Congregation started with 35 families and a few families have settled there since. Father Korchinski held either one or two services in the church in question. There was no objection to the first service, but at the second service some people, Petro Melnyk and two others, started a disturbance outside and knocked on the door and called him names. At his first service the church was full and all appeared satisfied. At the time of that service Father Zacklynski was away. I think he was there at the second service.

Cross-examination.

Cross-examination. To Mr. MacDonald:

I came from Galicia about 10 years ago. I am now about 23 years. I worked out the first two years; since that I have lived with my father. Until Father Dymytrow came in 1897, I had never seen a priest in our settlement. I do not know anything about the church I attended in Galicia. I do not know what it is called. At the first meeting in Halkow's they decided to build a Greek Catholic Orthodox Church. I am certain that the word "Pravoslavni" (Orthodox) was mentioned there. I did not gather from what was said at that time that they a different church from the one they attended in Galicia. When I saw the Catholic bishop or priest at Father Dymytrow's service in the school house it was the second time I saw him. The first time was when he stopped at my father's house all night. When he came he asked me if he could stay all night. I will not swear that he did not tell me that he was Bishop Legal. He told me that he would be a full bishop when the old bishop died. I will swear that my father did not ask him to help us to get the land for our church. I think that Petro Melnyk was not there that night, but I cannot swear that he was not. On the second occasion that the priest was at our place he camped near our house. The man he married on that occasion was Michael Paisch. I will not swear that he was a Pole, or that he was not an adherent of the Uniate Church or a member of the Congregation of the church in question. My father never confessed to that priest or bishop in my presence on that occasion or on any other occasion. I assisted as interpreter at the marriage of Paisch on that occasion. I never attended any service held by him except on that occasion. I never attended a service held by him at the school house except the one at which my Father Dymytrow was present. I never acted as interpreter for him at any service held by him in the school house. The only time I ever interpreted for him was at the marriage of Paisch. We got some logs for the church before the cemetery was consecrated. That is we had got the promise of some from Belcher and Sachman. I will not swear that any logs had been hauled before the consecration. When I was at

Sic.

home I attended Father Tymkiewicz's services. My father's family attended them. I did not see the priest or bishop pronounce the benediction at the close of the service of Father Dymytrow in the school house at which he was present. Those named in Exhibit C who live 48 miles from the church are men who are now employed in Edmonton, which is 48 miles from the church. Of the 20 or 25 names on the list I got signed, which do not appear in Exhibit C, I will not swear that any one of them was a member of Father Zacklynski's Congregation or agreed to subscribe for his support.

No. 34. Iwan Lakusta. Examination.

Iwan Lakusta, *resuming. (Philip Wagner, interpreter.) To Mr. Short:

Q. You came to this country from Galicia? *A.* Yes.

Q. How long have you been here? *A.* Seven years.

Q. Do you know anything about the church at Star? *A.* I do.

Q. Were you at any meeting? *A.* We had a meeting at Anton Sowka's.

Q. Anywhere else? *A.* There was another one at Iwan Halkow's.

Q. What were these meetings for? *A.* We had the meeting there for the purpose of writing down to the bishop.

Q. At which meeting was it that you wrote to the bishop? *A.* At Sowka's.

Q. You decided to write to the bishop at Sowka's? *A.* Yes.

Q. What bishop? *A.* Nikolai, his name was Nikolai, the Orthodox Bishop.

Q. Where did he live? *A.* I forget the place. Sowka read the letter.

Q. Sowka read the letter from the bishop? *A.* Yes.

Q. How many meetings were there altogether? *A.* They had two meetings. At the first meeting they decided to write, and at the next meeting ——

Q. At whose place? *A.* At Sowka's. Two meetings at Sowka's and one meeting at Halkow's.

Q. Who were there? *A.* Halkow, Sowka, Fedor Nymyrski and myself.

Q. The first time there were only four? *A.* When they read the letter there were only four.

Q. Well, the second time when they read the letter? *A.* Petro Melnyk, Nikolai Techowsky, Iwan Danczuk, Lewko Prochinsky, Ilko Sennatovicz, Iwan Halkow, Fedor Nymyrski, Constantine Nymyrski, Iwan Sachman, Wasyl Kreys, Wasyl Paisch, Jusko Zwenyko.

Q. Give the names of any of the Star Congregation? *A.* They were all there.

Q. Give the names? *A.* Dymytrow, Maceborski, Olexa Choram, Hnat Samborski, Petro Roskosz; there were another fellow, Kuszek, I don't know his initial; Michailo Melnyk, Nicolai Melnyk, Wasyl Feniak, Michailo Polushie, Iwan Pylypin and Wasyl Polushie. All the Galicians in the neighbourhood of Star were there.

Q. About how many Galicians were there in that settlement at that time? I mean families, at Star and at Wostok? *A.* There were nearly thirty Galician families at Star and Wostok at that time.

Q. You say the letter from the bishop was read? *A.* Anton Sowka read it and everyone heard it.

* *Sic.*

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No. 34.
Iwan Lakusta
—*continued.*

Q. What did you do? *A.* We came to the conclusion that we were going to build an Orthodox Church.

Q. Why did you so decide to do that? *A.* We decided to do that business, because we wanted to get away from the Polocks; because in the old country we were under the yoke of the Polocks and under the Pope of Rome.

Q. And you say you wanted to get away from the Polocks and the Pope of Rome? *A.* Yes.

Q. What had you to do with Pope of Rome? *A.* We had to pay a big tax to the Pope, and we were trying to get away from him.

Q. Was there any disagreement about building an Orthodox Church at that time? *A.* They were all satisfied but Fedor and Constantine Nymyrski.

Q. Why? *A.* Because Fedor and Constantine said they did not want to go so far to this church; they said, "We are going to build a chapel on our place, "so we do not need to go so far."

Q. Did you decide upon anything else at that meeting? *A.* No, they were all satisfied with this except the two Nymyrskis.

Q. Did you do anything else? *A.* We said we should get a priest.

Q. Did you decide where to look for a priest? *A* We asked the bishop to give us a priest.

Q Did you have more than one letter from the bishop? *A.* We had two, the second one came.

Q. Were you there when it was received? *A.* I was.

Q. What was done with it? *A.* It was read again. Sowka read it to the people again.

Q. The second letter was received from the bishop and Sowka read it to the people? Who were at that meeting? *A.* The ones who were there before were there again.

Q. The second letter was read in Halkow's? *A.* Yes.

Q. How far is Halkow's house from Sowka's? *A.* A quarter of a mile.

Q. Did anything come of all this? *A.* We decided then to select Trustees. Anton Sowka, Nicolai Melnyk and Constantine Nymyrski.

Q. Well, did you hear anything further from the bishop? *A.* He said in his letter ——

[Objected to by Mr. MacDonald as to any evidence being given as to the contents of the letter.]

Q. Well, did you hear anything further from the bishop or did anything further happen? *A.* Yes, he said there were priests coming.

Q. Did they come? *A.* Afterwards the priests came.

Q. What kinds of priests were they? *A.* Afterwards Orthodox priests came—Father Kamneff and Father Alexandroff.

Q. When did they come? *A.* After Easter—seven weeks after Easter. Before the Russian Whitsun Day the priests came.

Q. Was it in June that they came? *A.* It was in June.

Q. They held services, did they? *A.* Yes, at Fedor Nymyrski's place.

Q. Did you attend service? *A.* I was at service.

Q. Did all those attend who attended the former meetings? *A.* Yes, all those who attended the former meetings.

Q. What was done at the services ? *A.* The priest asked us if we wanted to be Orthodox, and we said yes. He asked us all, and we all said yes.

Q. Anything else ? *A.* He said, " Kneel down on your knees." He spoke to us, and we had to kneel down, hold up our right hand, with two fingers extended, and repeat his words.

Q. What were his words ? *A.* We had to swear that we renounced the Pope of Rome ; that we wanted to belong to the Orthodox Church. We said, yes, we all wanted to belong to the Orthodox Church.

Q. Who was the first to go forward in that way ? *A.* Spaczinski stepped forward first and kissed the priest's hands and feet and fell on his knees and said, " I am the first Orthodox."

Q. Who is Spaczinski ? *A.* He is a Russian.

Q. What did he do in the church ? *A.* He was a singer, a precentor in the church.

Q. Was he, or was he not, among those who held up their hands and swore to renounce the Church of Rome ? *A.* He was among those who swore to renounce the Church of Rome, and agreed to join the Orthodox Church.

Q. Did you hear him speaking with the priest at all ? *A.* I did.

Q. Did you hear anything further said between them ? *A.* He received a book from the priest, and he said, " I am one of your first Orthodox, and I will " go and take all the names down of the people which are here."

Q. What was he to do with the names ? *A.* He had to get the names to send to the bishop.

Q. Was anything said among the people about that ? *A.* We had heard from the bishop that we had to write down all the names of the people who were there.

Q. What was the purpose of getting the names ? *A.* He wanted to know the names of all those who were there who belonged to the Orthodox cause ; a lot were Uniates.

Q. Did these priests say who they were ? *A.* When they came they said, " We are sent from the Orthodox Bishop here ; we are Orthodox priests ; we " came up here to preach service and baptise your children and see how many are " here, and after a while we will send another priest here."

Q. Now, did the people talk matters over at that time ? *A.* Yes, they all talked about it.

Q. Did they come to any decision ? *A.* We asked those priests to send us another priest.

Q. Did you do anything else ? *A.* We had talked about building a church.

Q. What was said about that ? *A.* We disagreed in some particulars ; some said, here at Nymyrski's is the centre, and some said down at Star is the centre.

Q. What came of it ? *A.* They built their own church, and we built our own church We said that we were Orthodox and would build our own church here, and the others said we are Orthodox and we will build our own down here.

Q. Had the priests any talk about that ? *A.* We asked the priests if we could get any help to build these churches. The priests said, " We could help you " to build one, but I don't know that we could help to build two."

Q. Anything else ? *A.* We went apart then.

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No. 34.
Iwan Lakusta
—*continued.*

Q. Had you any talk about getting the land? *A.* Then we parted in the morning and came back in the afternoon, that same afternoon, and selected a place.

Q. Had you any talk about getting the land? *A.* Petro Melnyk said we could get 40 acres from the Government.

Q You talked about getting the land from the Government? *A.* Yes.

Q. Anything else? *A.* We were all satisfied that we could get it from the Government.

Q. Did you decide at what place you build the church at Star at that time? *A.* We decided that the 40 acres would be near Borwick's—near Limestone Lake; it was a mile from Borwick's.

Q. Was the church afterwards built? *A.* No.

Q. Where was it built? *A.* Close to Fedor Melnyk's.

Q. Another church was built on Fedor Nymyrski's place? *A.* Yes.

Q. These were the two churches of which they were talking at that time? *A.* Yes.

Cross-examination.

Cross-examination. To Mr. MacDonald:

Q. You live near to the church at Nymyriski's, near to the Wostok church? *A.* One mile from the church at Wostok.

Q. How many miles from the church at Star? *A.* Six miles.

Q. At the time of the first visit of Father Alexandroff you became a member of his Church, did you not? *A.* Yes.

Q. And Iwan Halkow did also? *A.* Yes.

Q. And Sowka? *A.* Yes.

Q. And the two Nymyrskis? *A.* Yes.

Q. Had you attended the meetings of Father Dymytrow, about Easter season? *A.* Yes.

Q. He came after your letter to the bishop, did he not, after the bishop had written that he was sending a priest? *A.* Yes.

Q. Did you attend any of the meetings of Father Dymytrow when he came back the second time, after Alexandroff and Kamneff? *A.* No, I did not.

Q. You never attended the services of Father Tymkiewicz the following year? *A.* Yes, I was once.

Q. And only once? *A.* Yes.

Q. And Father Tymkiewicz was there about five months? *A.* I didn't go any more because it was very far.

Q. You did not attend the services Korchinsky held? *A.* No.

Q. You did not put in any money toward the building of a church at Star? *A.* I worked one day at the church at Star.

Q. Was that before Father Tymkiewicz came? *A.* Yes, before.

Q. You remember Fathers Alexandroff and Kamneff coming back the next year? *A.* I do.

Q. And the third? *A.* Yes.

Q. And you went to their services in the second year and in the third year? *A.* Yes.

Q. And you confessed and took communion, did you? *A.* Yes.

Q. And you never confessed to Father Tymkiewicz and took communion ? *A.* No.

Q. Nor to Father Zacklynski ? *A.* No.

Q. Did you confess to Father Dymytrow on his first visit ? *A.* Yes.

Q. Now you say that all three of these meetings in the year before Alexandroff came—at least two of the three meetings—were held at Sowka's and the third at Halkow's ? *A.* Yes.

Q. Then the other witnesses who spoke of several meetings being held at Halkow's are mistaken ? *A.* I was there once ; I don't know about the others.

Q. If they say that the meetings were held at Halkow's and not at Sowka's, are they correct ? *A.* The meetings were held at Sowka's first because he was sick.

Q. Then the other people are mistaken ? *A.* I know that they were writing these letters in Sowka's.

Q. You were born in Galicia ? *A.* Yes.

Q. What was the name of the village ? *A.* Zawalie, in the district of Sniatyn.

Q. You had in Zawalie a " Ruska " church ? *A.* Yes. We had in our village a " Ruska " church.

Q. Was there any Polish church ? *A.* There was no Polish church in our village.

Q. And no Poles ? *A.* There were two Poles in the village.

Q. Then you had no other church and no other priest than your church and your priest ? *A.* Yes, that one priest was there.

Q. Did you spend your life in that village until you came here ? *A.* Yes.

Q. Did you ever enter a Roman Catholic Church ? *A.* Yes, it was close to Sniatyn and I have been there.

Q. How did you come to get on ? *A.* Sometimes when in town I would go in there and say my prayers and go home.

Q. But you would go of your own free will ? *A.* Yes, I went of my own free will.

Q. Did you ever have any difficulty in your village over religious matters ? *A.* I had nothing to do with them.

Q. But was there any quarrel ? *A.* There was sometimes when there was an election on ——

Q. I am not talking about politics. What I am asking is, did your own people in your village have any difficulties with your priest over religious matters ? *A.* Yes, they had a lawsuit.

Q. What about ? *A.* Because our Church was paying too much taxes.

Q. Did you all go to this one church to one priest ? *A.* We had a row every little while because we were forced to pay taxes to the Pope.

Q. What do you mean by paying taxes to the Pope ? *A.* When they collected it they said, " This is to go to Rome." They took the money out of the church and said that they had to send it to Rome.

Q. Now, is it not a fact, that each man there was supposed to pay so much to his parish priest for his support ? *A.* No, only taxes.

Q. But I mean that they had to pay a fixed sum to their priest ? *A.* The priest received his money out of the treasury.

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No. 34.
Iwan Lakusta
—*continued.*

Q. Then they put so much into the treasury—they had to pay a fixed sum ? *A.* Yes.

Q. They all did pay, didn't they ? *A.* Yes, they had to pay it.

Q. Did you ever have any difference about religion—not about money—in your church with your priest ? *A.* We had no difficulty at all, because we knew we had to stay, but here we know we are free.

Q. Had you ever been in Russia before coming to this country ? *A.* No.

Q. Are you able to read and write ? *A.* No.

Q. Did you know before coming to this country what the religion of Russia was ? *A.* Yes, the Orthodox religion.

Q. What is the meaning of the word " Pravoslavni " ? *A.* It means that nothing is changed from the way Christ taught.

Q. Do you call your Church in Galicia—the one you were brought up in—the Pravoslavni Church ? *A.* We call it in Galicia the " Greek-Catholic " Church.

Q. That is what most of the Russians call it, is it not ? *A.* Yes.

Q. Either that or the " Ruska " Church ? *A.* Yes.

Q. Do you consider that church of yours in Galicia was " Pravoslavni " ? *A.* I think it was an Orthodox Church, but we had to pray for the Pope. Here we do not need to.

Q. Tell us how you were made to pray for the Pope ? *A.* The priest prayed for him, but we did not.

Q. But you sat there and listened to it ? *A.* Yes.

Q. And you never made any disturbance about it ? *A.* No.

Q. What did you say in your Creed in regard to the Holy Ghost ? *A.* The Holy Ghost proceedeth from the Father and Son.

Q. You said that all your life long ? *A.* Yes.

Q. You knew that the Russian Bishop of Lemberg was the head of your Church in Galicia ? *A.* I can't read or write. I don't know.

Q. But you know, do you not ? *A.* Our bishop was in Stanislaw.

Q. You came here, you say, seven years ago ? *A.* Yes.

Q. As to these meetings at Sowka's—who kept the letters which were received from the bishop ? *A.* Anton Sowka kept the letters.

Q. Did you ever see them again ? *A.* I never did.

Q. And you don't know what became of them when Sowka died ? *A.* I do not know.

Q. You are now a member of the Church that Father Korchinsky presided over ? *A.* Yes.

Q. And you never had anything to do with the church at Star since Father Alexandroff was first here ? *A.* After Alexandroff came we started to build our own church.

Q. You joined at Wostok and since remained a member of that Church ? *A.* Yes.

Q. Where did you think that Fathers Alexandroff and Kamneff came from, what country ? *A.* We all thought that they were sent from the bishop, from the States.

Q. I mean what country in Europe did you think they came from ? *A.* They came from Russia—they said, " We are Russian priests."

Q. What were the words they used ? *A.* They said, " We are from Russia ; " the Bishop from the States sent us here."

Q. Did they say this, " We are Ruske Orthodox priests ? " *A.* They said, " We are Ruske Orthodox priests."

Q. Then you were not like a lot of others—you did not think these priests belonged to your own Church, the same Church you had lived in all your life ? *A.* We knew that they were Orthodox priests.

Q. I am not talking about " we "—I am talking about " you " ? *A.* I know myself.

Q. Did you know at that time ? *A.* I knew right away that they were Russians.

Q. Now, as far as you could hear, did they speak loud enough when they said they were from Russia, for every one around to hear ? *A.* Everybody could hear.

Q. Did Father Alexandroff use the expression, " I am a Rusyn, the same as " yourselves " ? *A.* He said, " We are Rusyni, the same as yourselves."

Q. Did they say their Church was the same ? *A.* It was not the same—in the old country they belonged to Rome—here they were under the Synod.

Q. What do you mean by " The Synod " ? *A.* I think it is a place where all the priests meet and are all paid from.

Q. Do you know where that place is ? *A.* I don't know.

Q. Now, you say that Father Alexandroff explained that he might be able to help for one church, but that he did not think he could help for two ? *A.* Yes.

Q. Now, is it not a fact that the number of people who wanted the church at Star was greater than the number who wanted the church at Wostok ? *A.* I couldn't say.

Q. Star was the older settlement, was it not ? *A.* Yes.

Q. And the people around there were better off than those at Wostok ? *A.* Yes ; that is the reason the people wanted to have their own church—they were better off.

Q. You say that afternoon you selected a site for the church. Father Alexandroff said, " Here is where your church will stand " ? *A.* Yes.

Q. Now, what church site was selected first—the one at Wostok or the one at Star ? *A.* The first site selected was at Star.

Q. And that was before Kamneff and Alexandroff came at all ? *A* Yes.

Q. Was Father Dymytrow present when you selected this 40 acres at Star —wasn't it while he was there ? *A.* I can't say—I don't remember.

Q. Can you tell—in fact, you have told me before—that the two Nymyrskis, yourself, Halkow and Sowka joined Father Alexandroff's church at his first visit ? *A.* Yes.

Q. Can you tell me anyone else belonging to the Star Congregation who joined at that time ? *A.* Sowka did not join there.

Q. Can you tell me anyone from Star who did join Father Alexandroff's church at that time ? *A.* Petro Melnyk.

Q. Did he get down and hold up his hands and swear ? *A.* Yes, altogether swore—the whole crowd swore that they gave up the Church of Rome, and joined his Church.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No. 34.
Iwan Lakusta
—*continued.*

Q. That was at the meeting at Nymyrski's, was it not ? *A.* It was after the service.

Q. But in front of the priest ? *A.* Yes, they were all on their knees.

Q. How many people were there altogether ? *A.* There were at least forty men.

Q. Forty men, women and children ? *A.* There were at least one hundred in all.

Q. These forty men were gathered pretty near to the priest when they took this oath ? *A.* Yes, the priest went around with a cross and they all kissed the cross and he put a little water on them.

Q. And he asked each man's name ? *A.* Yes.

Q. And took it down ? *A.* I couldn't say that he wrote them down; Spaczinski took the names down.

Re-examination.

Re-examination. To Mr. Short:

Q. In Galicia who are the governing class ? *A.* The Polocks and the Jews.

Q. What name did you hear given to your Church in Galicia most frequently ? *A.* The Ruska Church.

Q. Did you hear any other name ? *A.* I wasn't educated and didn't hear any other.

Q. At these meetings at Sowka's and Halkow's, did you decide upon any place to build a church ? *A.* Yes, Petro Melnyk said we could get 40 acres near Borwick's.

Q. Was there any other place near Star spoken of ? *A.* No, there was not.

Q. When did you decide on the site near Fedor Melnyk's ? *A.* At the second meeting at Sowka's.

Q. Had you any talk with Father Dymytrow about building a church ? *A.* No.

Q. Did you hear Father Dymytrow say anything about building a church ? *A.* At that time we did not say anything because we were too poor; we all said that we would just have a cemetery.

No. 35.
Iwan Halkow.
Examination.

Iwan Halkow, sworn. To Mr. Short:

Q. You live near Wostok ? *A.* Yes.

Q. You came to this country, how many years ago ? *A.* Seven years last month.

Q. Do you remember meetings about building a church held at Sowka's ? *A.* I do.

Q. Were you present ? *A.* Yes.

Q. How many meetings did you attend ? *A.* Three.

Q. Where were the meetings ? *A.* Two at Sowka's and one at my own place.

Q. What did you do at the first meeting ? *A.* We received a letter ——

Q. At the first meeting what did you do ? *A.* We had a meeting to decide where we could get a priest.

Q. What did you decide ? *A.* We decided that we would write for a priest.

Q. Where to ? *A.* We decided to send a letter to the bishop at San Francisco, Bishop Nikolai.

Q. What bishop was he ? *A.* The Orthodox Bishop.

Q. Did you come from Galicia ? *A.* Yes.

Q. What church did you attend there ? *A.* The Ruske Church.

Q. Was it the Orthodox Church ? *A.* The priest said every time, " Pray " for all who are Orthodox."

Q. Did that Church acknowledge the Pope of Rome or not ? *A.* Not before this Church belonged to Rome, but afterwards they forced them and they brought them under Rome.

Q. When you were there they were under Rome ? *A.* Yes.

Q. Is the Orthodox Church under Rome ? *A.* No.

Q. Why did you decide to build an Orthodox church at that meeting at Sowka's ? *A.* Because we wanted to be good Orthodox Christians here ; that is what we were long before.

Q. You wished to return to the faith of your forefathers ? *A.* Yes.

Q. Who did the most talking at those meetings ? *A.* Sowka, myself, Lakusta ——

Q. Who else ? *A.* Nymyrski.

Q. Anyone else ? *A.* At the first meeting there were only four.

Q. There were other meetings followed that first meeting, were there not ? *A.* Yes.

Q. All the Galicians were at the first meeting ? *A.* Every single one was there.

Q. Was Hawrylenko there ? *A.* Yes.

Q. Did he do some talking there ? *A.* Yes.

Q. You say you decided to ask for an Orthodox priest ? *A.* Yes.

Q. And to write to the bishop ? *A.* Yes.

Q. Did you get any answer from the bishop ? *A.* Yes, we received a letter.

Q. Did you see that letter ? *A.* I did.

Q. Will you look at these papers and tell me if you ever saw them before ? *A.* This is the same letter produced at the first meeting.

[Letter now shown marked X 12, for identification (Ex. 2), as having been received from Bishop Nikolai.]

Q. Was that letter read at that meeting ? *A.* It is the reply to the letter we sent out at the first meeting at Sowka's.

Q. That was read at what meeting ? *A.* The second meeting.

Q. The second meeting where ? *A.* It was read at the second meeting at Sowka's, and the first meeting at my place.

[The envelope marked X 13, for identification (Ex. 2 A), was produced with the letter at those meetings.]

Q. Have you read this letter over ? *A.* I have.

Q. Was that letter read at that meeting ? *A.* Yes, first Sowka read it, then Constantine Nymyrski read it, and then myself.

Q. How did you read it ? *A.* We all three read it aloud.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No. 35.
Iwan Halkow
—*continued.*

[Mr. Short proposes to put these two documents in, not on the ground altogether that they are evidence of the facts therein stated, but on the ground that what was stated therein was communicated to the meeting.]

[Objected to by Mr. MacDonald on the ground that it is stated by Iwan Lakusta and by this Witness, that the letter to the bishop was read at the first meeting, and those present were only Sowka, Fedor Nymyrski, Lakusta and this Witness, and it is then stated by Lakusta that from the time of that being forwarded the whole four of them adhered to the Orthodox Church, and never attended the services of the church at Star or of any of the priests that came there. The result is that this letter is an answer to a communication by people who had made up their minds to leave the Church that was in union with Rome, and that it is not a communication received from anyone who ever had any hand in the church at Star at all. If it could be shown that this letter is in answer to the communication addressed to the Orthodox Bishop at San Francisco, by a meeting in which a considerable number of the Star Congregation were present, it might have more bearing as showing what the sentiments of those people were at a certain date. I think perhaps it would be relevant, but here it is admitted to be in answer to a communication emanating from four members how, ever since that date, have been members of the Orthodox Church, and, who, in fact, have never been members of the Star Congregation, and the result is, I do not see how it could have any bearing. Now, I imagine that the only object in getting in this letter here is to show, by reference, what the communication was addressed to the Orthodox Bishop.]

By Judge Scott: I receive these documents as merely for the purpose of showing what was deliberated upon at the second meeting at Sowka's and subsequent meetings at Halkow's, as bearing upon the proceedings taken at those meetings, it having been shown by the evidence for the defence that a number of those present at the meetings referred to, are siding with the Plaintiffs in this action. The contents are not to be taken as evidence of the facts therein stated.

[Letter received in evidence and marked Exhibit 2.]

Q. Was anything decided at the first meeting at which Exhibit 2 was read? *A.* We selected Trustees.

Q. What for? *A.* So we could build an Orthodox church.

Q. Anything else? *A.* We collected $8.50, and at the same time picked out a place for the church to be built.

Q. Where was that place? *A.* Close to McGall's, near Borwick's place.

Q. Did you do anything else? Did you have any further communication with the Orthodox Bishop? *A.* Yes, we decided to write for a priest.

Q. Did you receive any further letters from the bishop? *A.* Yes, another one.

Q. Will you look at this and tell me if you ever saw it before? *A.* It is the same letter I got from the post-office.

[Letter marked X 14, for identification (Exhibit 3). It was contained

in the envelope now shown me. Envelope marked X 15, for identification (Exhibit 4.)]

Q. What did you do with it? *A.* I read it to some of the people.

Q. Where? *A.* At my own house to a few people who were there. Lakusta, Nymyrski and Sowka's wife were present when I read it.

Q. Any others? *A.* I opened it and read it to those who were around when I got it from the post-office.

Q. Did you show it to anyone else? *A.* Yes, to everybody.

Q. Then you had a meeting of all the people? *A.* Yes.

Q. What did you do with it? *A.* It was shown around to all the others, but no meeting was called.

Q. Who showed it around? *A.* Sowka.

Q. And how do you know that it was shown around? *A.* Because I saw it.

Q. When you say that Sowka showed it around, what do you mean? *A.* Sowka and I went around together and showed it to the people.

Q. Did you have any further meetings? *A.* No, after this letter we did not have any further meetings; the meetings were all held after we received the first letter.

Q. You say there* three meetings—two at Sowka's and one at your place? *A.* Two meetings were at Sowka's, and one meeting at my place; the first meeting at Sowka's was a small one, only four; the second meeting was a big one; the first meeting at my place was a larger one; it was at my place that the money was collected.

* *Sic.* Qy. were.

Q. Did they read the second letter at the large meeting at your place? *A.* When we had the meeting at my place the second letter was not there.

Q. Then all you did was to show it to the people? *A.* Yes.

Q. To whom did you show it? *A.* First of all I showed it to Lakusta and Nymyrski and to Mrs. Sowka, and when Sowka came out of the hospital there was a kind of a meeting, and Sowka read the letter there while they* all there at the service.

* *Sic.* Qy. were.

Q. Were you there? *A.* It was at my place.

Q. This was another meeting still, but it was a Sunday service? *A.* Yes.

Q. Was Petro Melnyk there? *A.* Yes.

Q. Was Danzuk there? *A.* Yes.

Q. And Techkowsky? *A.* Yes, and many others were there—both Prochinskys, Fedor Melnyk, Polushie, Mike Melnyk.

Q. The lay Defendants were there also? *A.* Yes.

Q. You say that you understood from these letters that priests were coming? *A.* Yes.

Q. Did they come? *A.* Yes, they came.

Q. When? They came on St. Peter's Day in June, did they not? *A.* Yes.

[Mr. Short tenders the paper X 14 as evidence.]

Mr. MacDonald: I raise the same objection as I did to the admission of Exhibit 2.

Judge Scott: I admit it for the same purpose as Exhibit 2.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No. 35.
Iwan Halkow
—*continued.*

(Letter received in evidence and marked Exhibit 3. Envelope received in evidence and marked Exhibit 4.)

Q. Did they hold service? *A.* Yes.

Q. Where did they hold service? *A.* At Fedor Nymyrski's farm.

Q. Who attended that service? *A.* Every Russian in the neighbourhood was there.

Q. Was Spaczinski the precentor there? *A.* Yes.

Q. What was done at that service? *A.* After the service we all knelt down and swore to renounce the Pope. Every single one there knelt down and swore to renounce the Pope, with right hand up and two fingers extended.

Q. Did these priests explain who they were? *A.* Yes.

Q. What did they say? *A.* We are Orthodox priests.

Q. At that time were you Orthodox yourself? *A.* I was Orthodox born; I was Orthodox, but we had to be under Rome in Galicia.

Q. Did the people there have any meeting after the service was over? *A.* We started to talk about a church, but we separated in the morning before doing anything.

Q. Did you have any further conversation about it? *A.* Spaczinski asked for a book and the priests gave him a book, and he said, "I am an Orthodox "believer"—that means a true Orthodox—"and I will take all the names down "of these people," and he marked down the names.

Q. Now, did you afterwards attend the service of any other priest in that locality? *A.* In the afternoon we had another one; in the evening there were not as many.

Q. Did you attend the service of any other priest in that locality? *A.* We could hardly get there—there were two lakes and no bridges.

Q. Did you ever go to hear Father Dymytrow? *A.* Dymytrow kept service in my house.

Q. When was that? *A.* That was on Easter Monday.

Q. Did you ever attend any other services? *A.* I myself no, because Dymytrow went away.

Q. Did you ever go to Father Tymkiewicz's services? *A.* No.

Q. Did you ever go to Father Zacklynski's services? *A.* No; it was too far and we could not get there; too much water and no bridge.

Cross-examination.

Cross-examination. To Mr. MacDonald:

Q. Are these two letters, Exhibit 2 and Exhibit 3, written in Great Russian or Little Russian? *A.* They were written in Great Russian.

Q. Where did you learn to read Great Russian? *A.* The letters are the same as Little Russian.

Q. But are the words any different? Is it not a fact that you cannot understand a man speaking in Great Russian? *A.* Why wouldn't I understand it?

Q. Is it not a fact that you and a man from Petersburg or Moscow cannot altogether understand one another? *A.* If a fellow did not go to school he could not, but I can.

Q. What are these first two words ? *A.* They mean, "Be satisfied," the firs two words of letter Exhibit 3, "Myr v Wzim."

Q. What are the Little Russian words ? *A.* Bud Spokajnyj.

Q. Did you go any better than a village school ? *A.* Just to a village school.

Q. And you say you learned Great Russian there ? *A.* Yes.

Q. Do you mean to say that the Austrian Government permitted the Great Russian language to be taught in the common school in Galicia ? *A.* Why wouldn't it ?

Q. Say yes or no ? *A.* Yes it is.

Q. Are you talking about the letters or the words, the language ? *A.* The letters were the same.

Q. Do you know that the language you were taught in school was the language you were also taught to read ? *A.* Yes, but we do not speak grammatically the way we are taught in school.

Q. You told Mr. Short that you had never gone to any priest after Father Alexandroff was there until Father Korchinski came ? *A.* No.

Q. But you went to Father Alexandroff's services one, two, three years in succession ? *A.* Yes.

Q. Do you remember the time that Father Tymkiewicz was there ? *A.* Yes.

Q. Did any of the people about Star, any of the Melnyks or the Pasemkos, or any of that settlement come to hear Father Alexandroff while Tymkiewicz was there ? *A.* I saw the Melnyks, but I did not see Pasemko.

Q. You saw the Melnyks at the services the second year ? *A.* Yes.

Q. While Tymkiewicz was down at the other place ? *A.* Tymkiewicz was not there.

Q. But Father Alexandroff has sworn that he was there ? *A.* He was only there for a couple of weeks and went away.

Q. Did you ever, during those couple of weeks, see any of the Star people there ? *A.* I saw Feniak.

Q. Anyone else ? *A.* Melnyk was there too.

Q. Which one of the Melnyks ? *A.* Fedor Melnyk.

Q. Suppose that all three of those men had sworn that they did not go to Father Alexandroff's except the first year, what do you say then ? Suppose these men all state that they never went to Alexandroff except once, and that while Father Tymkiewicz was there they never went to him ? *A.* I am sure they were there.

Q. Whether they say they were or not ? *A.* I saw them there.

Q. Ought they not to know themselves better than you ? *A.* When the priest Tymkiewicz went away to Beaver Lake the people went to Alexandroff.

Q. Some person must have written to the bishop in San Francisco before you got this first letter from him ? *A.* Sowka wrote.

Q. Who wrote the letter to the bishop ? *A.* Four of us were there, and Sowka wrote the letter.

Q. Was there anything said in the letter that Sowka wrote about some man in your settlement who was very learned and had gone through the Gymnasium in Galicia, and was a suitable man to be ordained priest ? *A.* It was said that if a priest would come they would need no precentor, because Sowka was an educated man and he could do the singing.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No. 35.
Iwan Halkow
—*continued.*

Q. As you understand the letter of the bishop, did he not ask you whether this man was a man of sufficient education to be ordained priest? *A.* Yes, it said in the letter that the bishop would come up and look at this man and see if he was fit to be made priest.

Q. Then you really had in view that Sowka might take Holy Orders and become your priest? *A.* We did not think that because that it was only written that he could be a precentor.

Q. Did not the bishop mention that perhaps this Sowka might be ordained as priest? Did you not then have an idea of having Sowka ordained as priest? *A.* No, because he was sick then.

Q. You did not expect him to die right away then—did you not discuss the matter of Sowka being ordained as priest? *A.* No.

Q. You were the master builder in charge of the Orthodox church in Wostok, were you not? *A.* Yes.

Q. Do you know where the funds came from to build that church? *A.* They sent some money from San Francisco.

Q. Do you know whether they sent any from San Francisco for the Star church? *A.* I don't know.

Q. Did you ask for any money from San Francisco, or did Father Alexandroff say that the Bishop of San Francisco would give you so much funds? *A.* We never thought of asking—Alexandroff offered.

Q. And sent it? *A.* Yes, only for one church and none for the rest—they did not give any to the rest.

Q. Did Father Alexandroff say to you that he was a Rusyn, the same as yourselves? *A.* Yes, he said, "I am a Mala Rusyn." He was a Little Russian because he was close to the line.

Q. I can understand you saying "Mala Rus"—— ? *A.* No," Mala Rusyn."

Q. Did you understand where he came from? *A.* From San Francisco.

Q. I do not mean that? *A.* He said he came from close near Galicia.

Q. But from Russia? *A.* Yes.

Q. Do you say there were $8.50 collected at the meeting at your place—who held that money? *A.* Constantine Nymyrski.

Q. Do you know what he did with it? *A.* Then he gave it to Sowka.

Q. What did Sowka do with it? *A.* I don't know.

Q. Were you at the consecration of the cemetery at Star? *A.* No.

Q. Did you ever give any money at all toward that Star church? *A.* No.

Q. Nor never took part in the work in any way? *A.* No.

To Mr. Short:

Q. Did you ever have any difficulty in understanding this letter? *A.* I can read it without any difficulty.

Q. Can you understand it? *A.* I understand every word.

Q. Could the people to whom you read it understand it quite well? *A.* They could understand it.

Q. After Father Alexandroff first came to Nymyrski's, did you continue to have service there or not? Were services held there after he left? *A.* No, when there was no priest, there was no service.

Q. You knew that Spaczinski held service ? *A.* That was no service.

Q. What was it ? *A.* He merely read from the book.

Q. And did you do that at Nymyrski's ? *A.* No.

Q. You were there when the cemetery was consecrated ? *A.* I was not there. The rest were all there but I did not go.

Q. Do you know anything about the fencing of the cemetery ? *A.* All my neighbours went to help fence, but I did not because I was not well.

No. 36. Mike Melnyk. Examination.

Mike Melnyk, sworn. To Mr. Short:

Q. You are one of the Defendants in this action ? *A.* Yes.

Q. You came to this country from Galicia ? *A.* Yes.

Q. How many years ago ? *A.* Nine years ago.

Q. You reside near Star ? *A.* Yes.

Q. Near the church in question in this action ? *A.* Three miles.

Q. When did you first take steps to organise a congregation there ? *A.* The first time was when we went up to Sowka's place.

Q. You first took steps to organise a congregation at Sowka's place ? *A.* Yes.

Q. How long after you came here ? *A.* I am not sure, it was not very long.

Q. Was it in 1897 ? *A.* Yes, it was in 1897.

Q. How many meetings were there at Sowka's ? *A.* I was twice at Sowka's.

Q. Were you at any other meetings about the same business ? *A.* We were twice at Sowka's, but we had a meeting at Halkow's and went to Sowka's to sign some paper because at Halkow's place it was small.

Q. Before signing that you decided to do something, did you not ? *A.* Sowka read this letter and he gave it to me to smell because there was some incense that the bishop had put on it.

Q. What did you decide to do ? *A.* We came to the conclusion that we should have a church built near Borwick's.

Q. What kind of a church ? *A.* An Orthodox church.

Q. Why Orthodox ? *A.* In the old country we were Uniates, and when we came here from the old country we saw we could be Orthodox the way our forefathers were.

Q. Who talked about that ? *A.* Halkow and Sowka spoke and had a talk over it and the other fellows listened.

Q. And did you decide to build an Orthodox church ? *A.* Yes.

Q. Did you decide to do anything else ? *A.* After the whole thing was over, and we had decided that we should build an Orthodox church, then we separated.

Q. Some letters were read at that meeting, were they not ? *A.* Sowka read the letters.

Q. What letters were they ? *A.* The same letters you showed me here now.

Q. Who were those letters from ? *A.* From the bishop.

Q. Did you do anything else at those meetings ? *A.* We just came to the conclusion that we were going to build a church.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No. 36.
Mike Melnyk
—*continued.*

Q. Who were present? *A.* Petro Melnyk, Nikolai Techowsky, Danczuk, my co-Defendants, and many others were there at those meetings.

Q. Nearly all the Galicians in the country were there? *A.* I don't think they were all there. A lot of them were there.

Q. After that came Father Kamneff and Father Alexandroff? *A.* Yes.

Q. Were you at their services? *A.* Yes.

Q. Do you remember anything about being down at those services? *A.* I do.

Q. What was done? *A.* Lots of them went to confession.

Q. Did you confess? *A.* Yes, I and many others confessed.

Q. What else? *A.* After the service was over the priest asked them which ones wanted to go over to the Orthodox Church—we had to kneel down and lift up our hands with our two fingers extended and had to kiss the cross, and then he put some holy water on us—we renounced the Pope and kissed the cross—we swore to renounce the Pope.

Q. Who did that? *A.* Spaczinski went to the priest and said, "I will be "the first Russian Orthodox man," and he received a book and little crosses and pictures to give around to the children.

Q. What else? *A.* He said he would go and take down the names of those who wished to go over to the Orthodox Church—then he christened children.

Q. Who did? *A.* The priest.

Q. What else? *A.* After I received the sacrament I went home and I don't know what happened after that.

Q. Did you know any who knelt down with you and swore to renounce the Pope? *A.* I could not see who did because I was right in the front, I was taking communion up at the front.

Q. Did you have any talk there about securing land for a church? *A.* No, I never heard anything of it because I went away. I heard about the meeting afterwards.

Q. You say that you met at Sowka's to organise a congregation? *A.* Yes.

Q. Did you organise a congregation? *A.* Yes.

Q. What congregation was that? *A.* We organised a Russian-Orthodox Church.

Q. Where did you afterwards build the church? *A.* We decided then and there to build a church near Borwick's.

A. No, we did not build this church at Borwick's. When the priest came there were a lot of other fellows came from near Wostok, so they decided to build one at Wostok, and one further west than Borwick's.

Q. Did they afterwards locate one further west than Borwick's? *A.* We decided to build two churches, one to the east and one further to the west, because there were a lot of people settling to the west, and those people could come to the west church and the other people farther east could come to the east church.

Q. Where did they decide to build the west church? *A.* At the place where it stands to-day, at Star.

Q. Is that your church? *A.* Yes.

Q. Then what did you do towards building? *A.* We held a meeting, five of us, and we decided to build,

Q. Who were the five? *A.* Myself, Fedor Melnyk, Mike Polushie, Iwan Pylypiw and Feniak.

Q. What steps did you take? *A.* Then we got Petro Melnyk and Techkowsky in—they did not want to build then.

Q. What did you build it of? *A.* Then we had a meeting again and then we signed a piece of paper to send to Tymkiewicz, how much we had to send him.

Q. What did you build the church of? *A.* Of logs.

Q. Where did you get the logs? *A.* We took a permit.

Q. Where did you get the permit? *A.* From the office.

Q. From what office? *A.* The Land Office.

Q. Who got that permit? *A.* We went to the Government and asked for the land—asked for the whole quarter section.

Q. Who got that permit? *A.* Myself, my brother Fedor and Mike Polushie got that permit.

Q. In what name did you take that permit?

[Objected to by Mr. MacDonald on the ground that it is secondary evidence. Objection sustained.]

Q. When you asked for a permit who wrote the permit? *A.* Kenny Morrison wrote it out at McGall's. Harry Belcher signed as witness.

Q. Did they ask you what church you wanted it for? *A.* Yes; we told them we wanted the permit to build an Orthodox church.

Q. Did you get a permit? *A.* Yes.

Q. Did you get the logs? *A.* Yes.

Q. Where did you get the money for the building of the church? *A.* The ones who were the best off gave $20 apiece; some paid $15; and some $10; those fellows around there who were well off paid $20, Petro Melnyk paid $15, and his boys—they are not married—paid $10, and Dwardowski paid $20.

Q. Did any others give anything towards that church? *A.* Maceborski gave $10; Prokopczak gave $20; Chichak gave $15; Anon Paisz gave $10; Sennatovich gave $20, and Nikolai Melnyk gave $15; no more signed, but they gave without signing, $15. Then Dwardowski gave $15 and Polushie gave $15.

Q. Did any others than the Congregation give any? *A.* We went around collecting at Fort Saskatchewan and Edmonton.

Q. Did you get anything? *A.* I can't tell exactly how much it was, but Spaczinski had it marked down.

Q. Can you give the names of anyone in Edmonton who gave any money? *A.* I don't know; I and Spacinzinski went around; I don't know who gave.

Q. Did any people in your own neighbourhood who did not belong to your Church give? *A.* Yes, the Germans gave, McGall gave $5, Harry Belcher gave, and a lot of others.

Q. Did you get anything from Frank Oliver? *A.* Yes, $5.

Q. When did you commence building the church? How long after Father Alexandroff was there—I mean first went there? *A.* Father Alexandroff was

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No. 36.
Mike Melnyk
—*continued.*

there in the spring, and we started to haul logs in the fall, and the next spring we started to build.

Q. How long did it take you to finish ? *A.* Two years.

Q. Between the time that Father Alexandroff first came there and the time that Father Korchinski came there had you ever gone back to the Uniate Church from the Orthodox ? *A.* I went to the Church that I belonged to.

Q. What Church was that ? *A.* The Orthodox Russian Church.

Q. Did you attend any services of Father Dymytrow after Father Alexandroff was there ? *A.* Yes, at the school house.

Q. Did he state to you what kind of a priest he was ? *A.* He said, " I don't " want to have anything to do with Rome, we are Orthodox and have nothing to " do with the Church of Rome."

Q. Did you go to the services of Father Tymkiewicz while he was there ? *A.* Yes.

Q. Did he state what kind of a priest he was ? *A.* He did, so I know all those priests were Pravoslavni priests—were Orthodox priests.

Q. Well, what did they say ? *A.* They said they were Ruski priests.

Q. Did they tell you anything else ? *A.* No.

Q. Did he pray for the Pope or did he not ? *A.* I never heard him.

Q. Did he say he belonged to the Pope or not ? *A.* Some went and asked him and he said, " I have nothing to do with the Church of Rome."

Q. Who got the land for your church first ? *A.* Wasyl Polushie went several times to the Governor for the land.

Q. That means Frank Oliver ? *A.* Yes.

Q. Well, the Roman Catholic bishop got the land in the first place, did he not ? *A.* The French bishop asked us if there was anything we wanted to build our church with, and Father Dymytrow told us to take everything we could get, but not to sign anything.

Q. Did you ever take anything from the French bishop ? *A.* No.

Q. Did the French bishop get the land where you built the church in his name first ? *A.* Yes.

Q. Was anything done about that by the Congregation ? *A.* We went and hired Philip Wagner for interpreter. The bishop told us then when we were up there that all through the States and all through Canada we had to belong under the bishop.

Q. Did you see the bishop ? *A.* It was not the bishop—it was the bishop's representative who told us that we must be under the bishop.

Q. Well, what happened ? *A.* We went once and he would not give it back : we went the second time and we hired Litke, the interpreter ; then this old priest there telephoned down to St. Albert to the bishop for him to come up here. He said, " The tail cannot wag the cat ; the head must be there to wag the tail." We said to him, " You are not our head, and we are not your tail."

* *Sic.*

Q. Well, what happened ? *A.* Then we said if he would* give the land back we would go to a lawyer, and the priest said, " If you don't leave that land where " it is I won't give you one nail." We said, " We don't want any nails, you can " keep them, we want our land." Then he gave us back our land and we started to build a church. Then the church belonged only to the Trustees and not to any bishop or to Rome.

Q. Did you buy a book for Spaczinski to keep the accounts in? *A.* Yes, I bought it myself.

Q. What did you do with it? *A.* I gave it to Spaczinski so he would have something to write in.

Q. How had he kept accounts before that? *A.* He used to keep them on some papers.

Q. What do you mean? *A.* He used to mark them down on small slips of paper and then he had a bigger piece at home where he marked it over.

Q. Did you ever see him writing on large sheets of paper? *A.* I didn't see him, he must have done it at home.

Q. He says that when you got him that book that he wrote down in the book from a sheet of paper, and you and Mike Polushie and John Pylypiw were there, and he handed you the book. *A.* I didn't see it.

Q. Did you ever see him writing in that book? *A.* I didn't see him.

Q. After you gave him that book did you ever see it again? *A.* I cannot remember that I saw it.

Q. Did you ever tell Spaczinski that you intended to stick to the Uniate or Greek-Catholic Church? *A.* No.

Q. Did you ever tell Spaczinski that you intended to stick to the Church that you attended in Galicia, and not go over to the Orthodox Church? *A.* No.

Q. After Tymkiewicz left, how long were you without a priest? *A.* After five months. I am not sure about it.

Q. Were you a long time or a short time? *A.* Six months to a year.

Q. How did you come to get Father Zacklynski? *A.* Zwaryez said he read in a newspaper a man's name, who said that he would like to go as a priest.

Q. What happened then? *A.* We wrote to Lemberg two years ago for a priest and no one would come out.

Q. Who wrote to Lemberg? *A.* Zwaryc.

Q. Then he said he had found out in a newspaper where he could get a priest? *A.* Yes.

Q. What did you do then? *A.* Then we wrote down to Zacklynski, and Zacklynski said he would be our priest if we would pay him $2 a year per family.

Q. Then what? *A.* Then we wrote down to Poliwka and offered him $3 a year, and Zacklynski said he would be our priest for $2.

Q. Did you have any meeting about it? *A.* Yes, we came up to Father Melnyk's.

Q. Did you go to the meeting at Danczuk's house? *A.* Yes.

Q. Why was that meeting held at Danczuk's? *A.* We held the meeting there on account of Zacklynski.

Q. Where did Danczuk live? *A.* Five miles from my place.

Q. How far from the church at Star? *A.* Eight miles.

Q. Why did they hold the meeting so far away from the church? *A.* So that the upper ones could join too.

Q. What upper ones? *A.* The Prochinskys and several more who lived east.

Q. Had they not the Church of Rome? *A.* No.

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Q. You told us last night that the meeting was held over at Danczuk's, so as to get the people there to go in with you—what people did you mean ? *A.* There were people there from Wostok and Goderich, Joseph Prochinsky and lots more were there.

Q. Did they ask you to do anything at that meeting ? *A.* They decided to write to Zacklynski, and we signed the agreement $2 a year.

Q. What do you mean by $2 a year ? *A.* $2 per family per year.

Q. Did you read the agreement ? *A.* I did not read it and I did not hear them read it.

Q. Did you ever see this document before ? *A.* I did.

Q. Where did you see it ? *A.* I saw a paper like this with these marks on, but when and where I do not remember.

Q. Can you read ? *A.* No, I cannot read.

A. Can you sign your name ? *A.* I can sign my name, but not very good.

Q. Can you see that name ? *A.* I can't see very well without my glasses.

Q. Put these glasses on and tell me ? *A.* I recognise my signature on Exhibit D.

Q. I ask the interpreter to read this ?

[Objected to by Mr. MacDonald on the ground that the Witness having admitted that he signed the document, it is not now open to him to state that he was not aware of its contents or did not understand it, and that he is bound by the contents.]

Judge Scott: I rule that he is not precluded from stating that he did not understand the nature and effect of the document.

Q. Having heard this document read, have you ever heard it read before ? *A.* I have.

Q. What have you to say about it ? *A.* We signed $2 a year on this.

Q. Did you or did you not ever hear that document read before ? *A.* I heard it when it was read ; I heard that we had to sign to pay $2.

Q. At the time of the meeting at Danczuk's, did you or did you not hear this document read ? *A.* I did not hear them read that paper at Danczuk's house—if they did read it I did not hear it.

Q. What happened at that meeting at Danczuk's house ? *A.* There was a letter from Zacklynski and some one said that we should pay $100 for a priest for some church vestments and to sign whatever we could pay a year, and we decided to send them $60.

Q. How long were you at Danczuk's house ? *A.* Perhaps three hours.

Q. What were you doing all that time ? *A.* All we had to do there was to sign to pay $2 for the priest.

Q. Did you agree as to what you should pay to the priest at once ? *A.* No, we had a quarrel over what we should pay first.

Q. Were you there when Father Zacklynski came to his first service ? *A.* I was.

Q. Did he state who he was or anything about himself ? *A.* He said, "I "am a Ruski priest ; my Church is that of the East."

Q. Did you ever afterwards find out anything different concerning him ? *A.* We did not find out anything different at first.

Q. Did you ever find out anything different ? *A.* We found out then that there was a difference—after he said, " I am not going to be your priest " and was going to go away.

Q. What happened at this time when you found that out ? *A.* We found out when he said, " I am under the Bishop at St. Albert."

Q. On what occasion did you find that out ? Do you know of any trial in which Father Zacklynski was concerned ? *A.* Yes.

Q. What was it ? *A.* He wanted us to go and borrow money from the bank and finish his house.

Q. What trial was that—what was the trial about ? *A.* Feniak sued Zacklynski.

Q. Wasn't it the other way around ? *A.* Yes, Zacklynski sued Feniak.

Q. And they held the trial where ? *A.* Before Holmes, J. P. at Star.

Q. Was it at that place you found out that Zacklynski was under the Bishop of St. Albert ? *A.* Yes.

Q. When they got back the land in the hands of the Trustees was Father Tymkiewicz there ? *A.* He was not with us.

Q. When you started to get it back was he with you ? *A.* He was not there when we started.

Q. You have just said now that when you got the land back from the Roman Catholic bishop that Father Tymkiewicz was not there—are you sure about that ? *A.* When Litke was with us Father Tymkiewicz was with us.

Q. At the time you had Mr. Wagner for interpreter was Father Tymkiewicz there ? *A.* I don't remember.

Cross-examination. To Mr. MacDonald :

Cross-examination.

Q. That law suit between Father Zacklynski and Wasyl Feniak was the result of a row on Easter Sunday at the church, was it not ? *A.* No.

Q. Then what was it about ? *A.* It was in the winter when they had the row.

Q. What was the suit about ? *A.* He sued them because they did not let him into the church.

Q. Before a magistrate ? *A.* Yes.

Q. Now when was it that you people changed your minds about building a church near Borwick's and decided on Fedor Melnyk's place ? *A.* I can't remember.

Q. Was it the first time Father Dymytrow was there in the Easter holidays ? *A.* No, it was not on Easter ; it was before.

Q. Now, at the time Father Alexandroff was there, you had already decided on Fedor Melnyk's place, had you not ? *A.* No, we just decided at the time when Father Alexandroff was there to put the church near Borwick's.

Q. Now, Iwan Sachman was interested in that church, was he not ? *A.* Yes, he gave us logs.

Q. Was not Iwan Sachman, from the outset, taking an active interest in the building of this church at Star ? *A.* Yes, he gave us logs.

Q. Now, Iwan Sachman is a somewhat better educated man than the most of your people, is he not ? *A.* Yes.

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Q. He reads and writes ? *A.* I don't know if he reads and writes.

Q. Has he not the reputation of being one of the best educated men among the Galicians ? *A.* Yes.

Q. Now you come from Nybylu ? *A.* Yes.

Q. You know both Nybylu and Pyryhynsko ? *A.* I do.

Q. There was no other church in those two villages but your Ruski Church ? *A.* There was no other but the Ruski Church.

Q. Was there a Roman Catholic Church in either village ? *A.* In Pyryhynsko there were a few Polacks, but no Polish church.

Q. In the two villages you had three churches, had you not, all the same ? *A.* Yes.

Q. All the same ? *A.* Yes.

Q. You never had any difficulties or interference of any kind with the Poles in your villages ? *A.* We had nothing to do with them.

Q. Now these difficulties between the Poles and the Rusyni arise in the part of Galicia where the population, the Poles and the Rusyni, are about equally divided ? *A.* There were no Poles around, and we had nothing to do with them.

Q. Do you yourself know of any difficulty between the Poles and the Russians ? *A.* Yes, because the Polacks and the Jews are ruling Russia.

Q. How could they rule them in Pyryhynsko when there were none there ? *A.* They are the Government.

Q. Who told you that ? *A.* I knew it myself.

Q. How do you know it when there are no Poles there ? *A.* Because this Government oppressed us and we had to go to Court.

Q. How could there be any oppression by the Poles when they were all Russian together ? *A.* In the village there was no Court ; we had to go into the town.

Q. Did you ever have any Russian-Catholic priests or any Roman Catholic bishop come into your village and interfere with your religion ? *A.* We had no priests come there, but when the bishop came we had to hide all the Russian books.

Q. Is it not a fact that you had two sets of books, one smaller than the other, and on state occasions when the bishop came you put by one set of books and took out the best ones ? *A.* We had books from the early times, from the old Russians—we had another book every six months, and then when the bishop came we had to hide those books and get other books ?

Q. Did you ever see a Roman Catholic priest in any church that you went to ? *A.* No, I never did.

Q. Did you ever see a Roman Catholic priest in your church ? *A.* No.

Q. You have seen your own Greek-Catholic Bishop of Stanislaw ? *A.* I have seen our own Greek-Catholic Archbishop of Lemberg.

Q. You knew that he was the head of your Church ? *A.* I don't know.

Q. Was that what you were taught—that he was the head of your Church ? Who were you told was the head of your Church ? *A.* I don't remember.

Q. Were you not taught from your cradle that the Pope of Rome was the head of your Church, and that the head man in Galicia was the Archbishop of Lemberg ? *A.* I don't know.

Q. What did you call your Church in Galicia ? What was your own name for it ? *A.* We called theirs the Polish Church and ours was the Ruski Church.

Q. You heard it called "Graeco-Katoleski"? *A.* In the old country the Russian books read that our Church is named "Graeco-Katoleska."

Q. You never heard your people call it "Uniate"? *A.* Yes, I have heard that name.

Q. Did you ever hear the name "Uniate" in Galicia? *A.* I did.

Q. What did it mean? *A.* I don't know what it meant.

Q. Did you ever hear your Church called the Uniate Church? *A.* I did.

Q. Where did you hear it? *A.* I heard it in Galicia.

Q. But where in Galicia? *A.* In Nybylu.

Q. How did they use the word—what were they talking about when they used the word "Uniate"? *A.* It was called this because our forefathers were all Russians, and then after awhile we were put in the force of Rome and we were united with Rome.

Q. Then you understand the word "Uniate" to mean, "United with "Rome"? *A.* Yes.

Q. That meant your own church, did it not? *A.* Yes, we had to obey the Pope.

Q. Did you ever object in your life while in Galicia to praying, or listening to prayers, for the Pope of Rome? *A.* I read it in a book.

Q. You said you could not read? *A.* I can read print, but I can't read writing.

Q. And you read in a book that you had to obey the Pope of Rome? *A.* Yes.

Q. Now, was not the first man who put that into your head, that you must, was Father Alexandroff? *A.* No; when we came to Canada we knew we were in a free country, and could do as we pleased.

Q. And you came here with the full determination to have nothing to do with the Church of Rome in any way? *A.* When we came up here it was with the full intention of having nothing to do with the Church of Rome.

Q. Why did you go to the meeting held by Bishop Legal, when he held service in Latin? *A.* I was there, but he did not hold any service.

Q. When the bishop swears that he read Mass in the Latin language, and mentions many as being there, was the bishop lying? *A.* I did not hear it.

Q. Were you there at the time Father Dymytrow held Greek-Catholic service, and the bishop was there and sat beside the altar during the service? *A.* The bishop did not say a word.

Q. Did the bishop sit beside the altar? *A.* Yes.

Q. Did not the bishop, at the close of the service, stand up and pronounce the benediction with his hands out? *A.* I did not see it.

Q. Did you shut your eyes? *A.* I can't say I saw him when I didn't.

Q. Will you swear that the bishop did not pronounce the benediction? *A.* I will swear again that I did not see him.

Q. Will you swear that the bishop says what is untrue when he says he pronounced the benediction? *A.* I don't know whether he lies or not. I didn't see him.

Q. You were there and did not see him? *A.* I was there.

Q. You were there and did not see him? *A.* I was there.

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Q. And you knew that this man, sitting beside the altar, was the French bishop ? *A.* I did know.

Q. You knew that he was sitting there with the approval of Father Dymytrow ? *A.* I did know that.

Q. Did not Father Dymytrow, after the Mass, tell to your people in your language, what the bishop said in regard to the church, &c. ? *A.* Yes.

Q. You must have known that Father Dymytrow and the bishop were on good terms and associated together ? *A.* I did not know they were on good terms, because Dymytrow said, " If the bishop will give you anything, receive it, but do " not sign anything."

Q. You went to Father Dymytrow's services when he was first there on Easter ? *A.* Yes.

Q. You went also to his services when he was there in the fall, in September ? *A.* Yes.

Q. And you were there in the woods cutting logs with Father Dymytrow accompanying you ? *A.* Yes.

Q. You attended the services of Father Tymkiewicz during the whole five months that he was there, did you not ? *A.* Yes.

Q. And were perfectly satisfied with him ? *A.* Yes.

Q. You say you also signed the contract asking Father Zacklynski to come at $2 a family ? *A.* Yes.

Q. And you never had any difficulty with Father Zacklynski up to the time of the row about the provisors in December ? *A.* Not as long as he said he was Eastern.

Q. Up to the time that this row took place did you not regularly attend Father Zacklynski's services, up to December ? *A.* Yes.

Q. Now Father Zacklynski in nominating the provisors left out the other two old Trustees and put you in, did he not ? Did Father Zacklynski say that he nominated twelve people as provisors, and out of those twelve selected three who should be the Trustees, you, Paulo Pasemko and Petro Melnyk ? *A.* No, he selected the Trustees afterwards.

Q. Were you not one of the three selected ? *A.* Yes.

Q. At that time it is quite evident that Father Zacklynski was on good terms with you, and you with him ? *A.* Yes.

Q. When did you yourself fall out with Father Zacklynski ? Who were the three new Trustees that Father Zacklynski selected ? *A.* Father Zacklynski selected only two Trustees after he went away. He only selected provisors and no Trustees until after he went away.

Q. There were a great many people present on the 18th of September, and it has been sworn distinctly by several witnesses already that Father Zacklynski named out of the twelve three provisors or head men, and you were one of the three. Do you remember the meeting at which Father Zacklynski appointed a Committee of twelve ? *A.* I do. I remember his naming twelve men.

Q. Were you one of those twelve men ? *A.* Yes.

Q. And did he not call Wasyl Feniak another ? *A.* Yes.

Q. Now then, up to that time, is it not true that neither you nor Wasyl Feniak had any quarrel with Zacklynski ? *A.* Yes, it was from this time on the trouble commenced.

Q. Father Zacklynski asked Wasyl Feniak to take oath, did he not ? *A.* Yes.

Q. And Wasyl Feniak said, " What should I take an oath for " ? *A.* Yes.

Q. Father Zacklynski said, " The oath I want you to take is this—to swear " that you will always be a true Uniate, and go neither to the Russian Church or " to the Church of Rome ? " *A.* That is not so.

Q. Did not Wasyl Feniak then make use of these words, " I will take no " such oath ; I have always been a true Uniate and I intend to live and die so." *A.* He did not.

Q. What oath did he want him to take ? *A.* I don't know because I didn't hear it.

Q. What was Wasyl Feniak asked to take an oath to ? *A.* He didn't say. He only said " to take an oath," but didn't say what for.

Q. And Wasyl Feniak refused to take an oath without knowing what for ? *A.* Yes.

Q. Is it not a fact that immediately after this meeting, when the provisors were named, that the old three Trustees handed over the cash box and the keys to Pasemko, Petro Melnyk and you ? *A.* The box was supposed to go to Feniak ; It did not go to Feniak, but was given to Petro Melnyk ; Feniak asked Petro Melnyk to take it until his house was finished.

Q. That happened right after this meeting in December ? *A.* Yes.

Q. The key of the church was given to Petro Melnyk for a short time, was it ? *A.* I don't know, because it was supposed to be at Polushie's ; I don't know anything about it.

Q. You remember when the money was being counted up, about the time of the row ? *A.* Yes.

Q. You used Spaczinski's book to count from ? *A.* I didn't have it.

Q. I am not asking if you did—you saw the people counting, did you not ? *A.* Yes.

Q. And they were reading the entries out of Spaczinski's book and adding them up to see if they compared with the cash ? *A.* Yes.

Q. You did not hear anyone say that the book was wrong, did you ? *A.* I did not hear anyone say so.

Q. You say that you went in for building an Orthodox-Greek-Catholic church ? *A.* Yes.

Q. What do you mean by the word " Provoslavni ? " *A.* In the old country the priest says that we are all Orthodox ; the priest in the service in Galicia says, " Pray for all Provoslavni Christians."

Q. And that is your reason for calling yourself " Provoslavni ? " *A.* Yes.

Q. Do you know what Church you belong to now ? *A.* Yes.

Q. What is the name of it ? *A.* The Provoslavni Church ?

Q. Which Provoslavni Church ? There are twenty Provoslavni Churches ? *A.* We belong to the Church that the Pope has nothing to do with.

Q. Are you a good Presbyterian or Baptist—the Pope has nothing to do with those ? *A.* I know that I belong to the Russian Provoslavni Church.

Q. And you belonged to that in Galicia, you say ? *A.* In the old country we had to belong under the Pope.

Q. But still you were Provoslavni ? *A.* Yes.

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Q. Do you know where the head of your Church is ? *A.* Jesus Christ.

Q. I mean the head on earth ? *A.* The older priests.

Q. What country do they live in ? *A.* I don't know—our oldest head is in the States.

Q. Is there any one over him ? *A.* I don't know.

Q. Do you know where the head of the Church lives ? *A.* Mr. Feniak said he lived at a place called the Holy Synod, but that he did not know where it was.

Q. Do you know ? *A.* We heard there is some one older than this man, but I don't know where.

Wasyl Feniak re-called.

Wasyl Feniak, recalled. To Mr. Short :

Q. Did you, or did you not, on the occasion of Father Alexandroff's first visit, renounce the Pope of Rome and agree to join the Orthodox Church ? *A.* When Alexandroff and Kamneff came we all went there, and he told us that all who wanted to go over to his Church should kneel down and repeat his words, and we all knelt down and extended our right hands and repeated his words out of a book, and then he put some water over us.

Q. What were the words he said ? *A.* Those who were close to him could understand what he said, but those farther back could not understand every word.

Q. Could you understand ? *A.* I was away back and did not understand.

Q. Did you do anything else besides hold up your hand ? *A.* I did not do anything else.

Iwan Pilipiw re-called.

Iwan Pylypiw, recalled. To Mr. Short :

Q. Were you at Father Alexandroff's first services at Nymyrski's ? *A.* Yes.

Q. Did you do or say anything at that service or at that meeting ? *A.* It was a service.

Q. Did you do or say anything at that time ? *A.* After the service was over Father Alexandroff took us over to the Orthodox Church.

Q. How did he do it ? *A.* He told us to kneel down and extend our two fingers of our right hand, and he prayed from a prayer book and told us we should renounce the Pope and his errors and go over to the Greek-Catholic Orthodox Church.

Q. Did the priest do anything at that time ? *A.* The priest had a book and prayed out of the prayer book.

Q. Did he do anything else ? *A.* He put some holy water on us and gave us the cross to kiss, and we got up.

To Mr. MacDonald :

Q. Were you one to renounce ? *A.* Yes.

Q. Did you go through this service without first confessing ? *A.* Yes.

Q. And still you went through the service ? *A.* Yes.

Q. You heard both Father Korchinski and Father Alexandroff examined here, did you not? *A.* They gave their evidence in English.

Q. I understood Father Alexandroff and Father Kamneff to say that before receiving a man into their Church they confessed him, found out what he felt and what he thought and if he was willing to renounce—then when he confessed and was willing to renounce he went through this service and took communion? *A.* We could not all go to confession because there were too many there.

Q. And Father Alexandroff simply called out to you, "All who are willing "to join the Church kneel down and hold up your fingers"? *A.* Alexandroff said, "Everyone who wants to come over to our Church kneel down, hold up your "fingers and listen to what I say."

Q. You were examined before the Clerk of the Court? *A.* Yes.

Q. Quite a lengthy examination? *A.* Yes.

Q. And you also swore an affidavit in this matter nearly two years ago now? *A.* Yes.

Q. And you were examined at great length here? *A.* Yes.

Q. Why is it that you never told us until now that you renounced the Pope? *A.* Whatever they asked me I answered them; they never asked me and I never answered.

Q. How did you know you were going to be asked this question at this time? *A.* Because they called me up here and asked me.

Q. Was this the same service you went through with before Father Korchinsky when you renounced the second time? *A.* Yes.

Fedor Melnyk, recalled. To Mr. Short:

Fedor Melnyk recalled.

Q. Were you at the first meeting that Father Alexandroff held at Nymyrski's? *A.* Yes.

Q. Did you do anything at that meeting? *A.* We prayed to God there.

Q. Anything else? *A.* After the sermon was over we went over to the Orthodox Apostolic Church.

Q. What did you do? *A.* Then he sprinkled us with water and we went home.

Q. Tell us what he did? *A.* We knelt down, we lifted up our right hand and extended our two fingers and followed the priest's words.

Q. What were the words? *A.* We had to say the Creed.

Q. Anything else? *A.* Then he read the prayer out of the book.

Q. Anything else? *A.* Then he sprinkled us with water.

Q. Did you do anything else? *A.* He told us that we were then free from Rome.

Q. Did he do anything else besides sprinkle you with water? *A.* That is all.

Q. Have you told all that you remember now? *A.* We kissed the cross.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Defendants' Evidence.

No. 37. Michael Gowda. Examination.

Michael Gowda, sworn. To Mr. Short:

Q. You understand both Russian and English, Mr. Gowda? *A.* I do.

Q. You made a translation of the letter Exhibit 2—will you look at this translation and say if it is yours or not? *A.* Yes.

Cross-examination. To Mr. MacDonald:

Q. You were educated in Galicia? *A.* Yes, in Perismyzl.

Q. How far was your education extended? Did you go higher than the ordinary school? *A.* I finished three years in the high school—then I had some education in order to be a school teacher in the country.

Q. Did you ever learn Great Russian? *A.* Yes, I did. I was three years in the college of church singers.

Q. Was Great Russian taught there? *A.* We had some books ——

Q. I say, were you taught the grammatical difference between Little Russian and Great Russian? *A.* There is a little grammatical difference.

Q. Are there not thousands of words entirely different? *A.* Of course. There are thousands of words different in every language.

Q. Are there not a very great number that no Little Russian could understand? *A.* I don't know that there is that much difference.

Re-examination.

Re-examination. To Mr. Short:

Q. Looking at this document Exhibit 2, you say that you can read this in the language in which it is written? *A.* Yes, I can read it—some words pretty slow, but I can read it. It is written by a man whose writing I am not used to, and I have to think a little over some words.

Q. You have made a careful translation? *A.* Yes.

Q. You made a literal translation and also translated it freely so that it reads in English properly? *A.* Yes. I don't know very much grammar, but I explained it as well as I could, but if translated this letter word for word not half the people could understand it, because there would be no grammar in it.

Q. You have translated it word for word and you have also translated it so as to read intelligently in English? *A.* Yes.

Q. This is a true and correct translation of the original Exhibit X? *A.* Yes.

Mr. Short puts in envelope marked X 13, now marked Exhibit 2A.

Mr. Short: I also put in translation by Mr. Michael Gowda as Exhibit 5. Objected to by Mr. MacDonald.

Q. You say this letter Exhibit 2 was written in what might be styled "church language"? *A.* Yes, more or less church language.

Q. That language you understand? *A.* I think I understand it.

Q. Have you taken any means to verify your understanding of this language? *A.* Not a great deal—there was a word or two I couldn't understand, but after I think it over I could make myself understand it.

Q. Did you use a dictionary? *A.* No, I did not.

Q. You have a dictionary for use where you find you need it? *A.* Yes, I have one, but I loaned it.

Q. Will you look at this letter, Exhibit 3, and say whether or not you can read it? *A.* Yes.

Q. How is it written? *A.* It is written in the Russian alphabet, and it is written more or less in church language; a few words from the Little Russian too, because this man seemed to be educated in Great Russian, but when he was in the States and was talking to different kinds of people he seemed to learn different words from the different people, and he writes in the language he is speaking.

Q. Have you any difficulty in reading that and understanding it? *A.* Not a great deal—a few words are not very plain, so I have to think over them, but I can read it.

Q. Did you make a translation of that? *A.* Yes, I made a translation to Little Russian language. I have it right here, and I can read it very well; I put it in Little Russian first and then in English.

Q. Will you look at this document and say whether this is your translation or not? *A.* Yes; it is not my writing, but it is my translation.

Q. Is that a correct translation? *A.* I think so, because the man who wrote it should not have changed anything.

Q. Will you read it over and see if it is a true translation? *A.* Yes, this is a true translation.

Q. You have had some education in Galicia? *A.* Yes, I have.

Q. I believe you are counted a good interpreter here in Edmonton? *A.* I have done considerable of that.

[Translation produced in evidence and marked 6.]

Q. Do you know the handwriting of Father Alexandroff? *A.* No, I don't.

Q. Will you look at this and compare this with the translation you have made? Having compared your translation with the translation in my hands, did you find much or little difference? *A.* There is practically none.

Q. You said in answer to a question put by the learned counsel for the Plaintiffs, that these Galicians could understand those letters that were read to them—is that the case? *A.* Yes.

[By consent of counsel the translations Exhibits 2 and 3, by Father Alexandroff, are put and marked respectively Exhibits 7 and 8.]

Q. Have you, at any time, had occasion to converse with any person speaking the High Russian language? *A.* Yes. I was speaking with Father Alexandroff the last time he was here.

Q. Any others? *A.* Father Korchinski.

Q. The language they use is slightly different from that used by the common people? *A.* Yes, a little different, but when a man speaks to me I can answer him.

Q. Have you ever spoken to any other? *A.* I have not met very many of the Great Russians. Some Germans came to me from Stoney Plain, and I can trade with them just as well as in my own language.

Q. They speak Great Russian? *A.* Yes, they come direct from Russia.

Re-cross-examination. To Mr. MacDonald:

Re-cross-examination.

Q. Tell me the name of the Germans in Stoney Plain who speak the Great Russian language? *A.* I don't know them very well—Andy Myer was one.

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No. 37. Michael Gowda —*continued.*

Q. Will you deny that the Little Russian language is spoken in the Caucasus ? *A.* I have not been there.

Q. And you think he speaks Great Russian because he comes from Russia ? *A.* Well, there is quite a little difference to hear.

Q. Have you ever heard people from Ukraine ? Do you know where it is ? *A.* Yes ; I read some books from there and I can understand it.

Q. It is a little different from your own language, yet you can understand it ? *A.* Yes.

Q. Will you undertake to say that there is a single German in Stoney Plain who speaks Great Russian ? *A.* Yes ; Andy Myer, Jacob Baron and a great many more—I can't tell their names.

Q. Tell me any one of them who came from a part of Russia where Great Russian is spoken. *A.* Well, Mr. MacDonald ——

Q. Where is Little Russian spoken ? *A.* It is spoken all over the world where Little Russians are.

Q. Mr. Gowda, will you tell me the portions of Russia in which Little Russian is spoken and Great Russian is not ? *A.* Yes, in Kiev.

Q. Tell me where the Little Russians of Russia live ? *A.* A good many live in Kiev and a good many in St. Petersburg.

Q. Where is the native home of the Little Russian race ? *A.* A good many live in ——

Q. I tell you that the home of the Little Russian race extends in a broad belt from the western end of Galicia right straight to the Asiatic frontier, amounts to twenty millions of people ? *A.* Yes.

Q. Did not every one of these Germans that you speak of come from that part of Russia ? *A.* I don't know.

Q. Did they come from Odessa ? *A.* Yes, I think so.

Q. When did you cease to be a Uniate and join Father Skabinsky's Church ? *A.* I have not joined it.

Q. You are still a member of the Uniate Church ? *A.* I have not changed my religion.

Q. Are you still an adherent of the Church of Father Philas, Father Diduk and Father Strazky ? *A.* Yes.

Q. Then you are still a Uniate ? *A.* Yes.

Q. And you intend to remain so ? *A.* Yes.

Q. And you were, from time to time, a member of Father Zacklynski's Church ? *A.* I went to every church, but I know what I am. I go to the Provoslavni Church and I go to the Catholic Church. I was married in the Provoslavni Church, because my wife is of the Orthodox Church, and I had to.

Q. But you still are yourself a member of the Uniate Church ? *A.* Yes.

Q. Did you ever live at all at Star ? *A.* No.

Q. Then you know personally nothing about the difficulties in the church out there ? *A.* I know what people ——

Q. But you know, of your own knowledge, nothing about it ? *A.* No.

Q. Were you in town at the time that Father Tymkiewicz and some of his men there went to the Land Office to get the title of the church changed ? *A.* No, that was before I came.

To Mr. Short:

Q. Can you read a newspaper printed in Great Russian, and understand it? *A.* Yes, I can understand it all, with the exception of perhaps a few words.

Rev. Henry A. Gray, sworn. To Mr. Short:

Q. You are a clergyman of the Church of England? *A.* I am.

Q. And the rector of the All Saints' Church at Edmonton? *A.* Yes.

Q. I understand, that some time ago, you made a visit to the Galician settlement near Star? *A.* I did.

Q. When was your visit? *A.* Four years ago in April, 1898 or 1899, I am not quite sure; I think it was 1899.

Q. What was the object of that visit? *A.* The visit was made under a commission issued by the Bishop of Calgary.

Q. And you met whom on that occasion? *A.* I met Polushie and Spaczinski.

Q. Wasyl Polushie or Billy Polushie? *A.* William Polushie and his father and Spaczinski.

Q. Did you know anything about him? *A.* He was represented to me by Billy Polushie, the interpreter, and the father of the interpreter, as being the body over the Church.

Q. What office did he hold? *A.* From what I am told, I should judge the lay reader.

Q. How were you received? *A.* We were not received at all at first.

Q. Will you explain? *A.* The interpreter informed us—and his information was borne out by the manner of Spaczinski—that he took us for representatives of another Church, and until he was satisfied that we were not, he would scarcely offer us the courtesy of entering his house. The Rev. G. C. D'Easum, of Fort Saskatchewan, was with me.

Q. What Church did he think you represented? *A.* He thought that we had been sent down by Father Leduc.

Q. And did he mention what Church he took you to belong to? *A.* I do not remember that he mentioned the Church, but he mentioned Father Leduc's name; that was the interpreter's explanation.

Q. What followed that? *A.* We produced our commission, and we stated our errand and he examined the commission—he asked us several questions—seemed satisfied that we were what we represented ourselves to be, and discussed the situation.

Q. What did you represent yourselves to be? *A.* Representatives of the Church of England.

Q. Now you said at first that they would not receive you at all? *A.* The impression gave us that we were not welcome would be more accurately descriptive of the occasion.

Q. Well, afterwards—was there any change? *A.* Decidedly so; we were asked in and offered a seat.

Q. Now, as a clergyman, you know something of churches and church bodies, Mr. Gray? *A.* I suppose so.

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No. 38. Rev H. A. Gray —*continued.*

Q. What Church does the expression " Greek-Catholic " designate ?

[Objected to by Mr. MacDonald on the ground that no person has a right to define the term when the proper definition of the term can be found in authentic works.]

Judge Scott: It does not make the slightest difference. You may put the question.

A. It designates a Church that adheres to the primitive teaching of the Apostles.

Q. Give your definition of the word Catholic ? *A.* A Catholic is one who preserves the unity of the faith, the words delivered by the Apostles, the fellowship, the worship, which includes the breaking of bread and the prayers. You will find it all in the second chapter of the Acts.

Q. Will you apply your definition to the Churches as they exist at the present time—what Churches are to-day designated Catholic ? *A.* We regard certain Churches that comply in our interpretation with those conditions—the Church of Rome, our own Church and the Greek Church. I would not like to express an opinion as to the smaller Churches of the east.

Q. What have you to say to the claim of the Roman Catholic Church to the exclusive right of the word " Catholic " ? *A.* We deny their exclusive claim; we claim it ourselves.

Q. You do not, however, use the designation " Catholic " merely as a name ? *A.* No.

Q. The use of it in that sense, in speaking generally, has ceased for some time ? *A.* Yes.

Q. Speaking ecclesiastically you still call yourselves the Anglican branch of the Catholic Church ? *A.* Yes.

Q. Does that same language apply to the Greek Church ? *A.* Yes.

Q. Does the Greek Church cease to call itself " Catholic " ? *A.* Not that I know of. The term " Catholic " was dropped, not during the Reformation, but during the Puritan regime which followed, and has never been restored into general use, but it is nevertheless maintained in the Church formula.

Q. The early Christian Church is divided into what is called the " Eastern " and " Western " Church ? *A.* Yes.

Q. The Western Church became known as what is called the " Roman Catholic " Church ? *A.* Yes, but it would be very difficult to say when that descriptive term came into use.

Q. The Eastern Church would be known as what ? *A.* There was a Church in Alexandria, and there was the Church in Constantinople; the Church in Constantinople was known as the Greek Church.

Q. That is, it was the head of what was known as the Greek Church ? *A.* Yes.

Q. And that is the Church to which you apply the term " Greek-Catholic " ? *A.* Certainly.

Q. Would you apply the same designation to the Russian Orthodox Church ? *A.* It is one and the same thing.

Cross-examination. To Mr. MacDonald:

Q. Your definition of the word "Catholic" is the Church which maintains the unity of the faith? *A.* Yes.

Q. Your Church maintains the unity of the faith in the same sense as the Roman Catholic—that is, you believe in the words of the Creed which you recite in your services—your Creed contains your service, does it not? *A.* I do not clearly understand what you mean.

Q. Your Creed is the Creed of the Catholic faith, and the Church which maintains the unity of that faith is entitled to the name of "Catholic"? *A.* Certainly.

Q. What do you make of the fact that the Greek Church universally in Russia, and everywhere else, does not maintain that unity, does not adhere to the Catholic faith in that it does not admit the procession of the Holy Ghost from the Father and from the Son? Is there any one which fails to recognise the procession of the Holy Ghost from the Father and the Son other than the Greek Church? *A.* Certainly.

Q. Now you refer then to the Church which maintains the unity of the faith as a Catholic Church? *A.* Yes.

Q. The word for a Church not upholding the unity of the faith would be schismatic? *A.* Yes.

Q. You are aware of the fact, are you not, that the Roman Catholic Church designates the whole Greek Church as schismatic, and that the Greek-Catholic calls the whole Roman Catholic Church schismatic? *A.* Quite so.

Q. Is it possible for them both to be Catholic? *A.* Quite so.

Q. How is that? *A.* The unity of the faith is that which you will find in the Acts of the Apostles and the doctrine delivered by the Apostles as employed in the earlier days of the primitive Church in Apostolic succession. I am using that term in reference to primitive days.

Q. And although the Greek Church departs from that faith you still say they are Catholic? *A.* Yes.

Rev. David G. McQueen, sworn. To Mr. Short:

Q. You are a minister of the Presbyterian Church? *A.* Yes.

Q. At Edmonton? *A.* Yes.

Q. I believe you also had occasion to visit these Galicians at Star in connection with the duty of your Church? *A.* Yes, three years ago last May.

Q. Did you know the priest they had out there, Rev. John Zacklynski? *A.* I knew him by sight—I never spoke to the man—I saw him with Mr. MacDonald at one time and Mr. MacDonald told me who he was.

Q. You are one of the members of the Home Mission Committee of the General Assembly of your Church? *A.* Yes.

Q. And as such your duty requires you sometimes to be in Winnipeg? *A.* I was in session with the Synod's Home Mission Committee, the Synod of Manitoba in the North West, in the beginning of last March at Winnipeg.

Q. At that time did anything concerning Father Zacklynski come before you? *A.* Yes, his name came up in the business of the committee.

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No. 39. Rev. D. G. McQueen —*continued*.

Q. Will you state the proceedings of the committee of which you are a member? *A.* I am a member of the Home Mission Committee of the General Assembly of the Presbyterian Church in Canada. I am also a member of the Home Mission Committee of the Synod of British Columbia which includes the district of Alberta within its boundaries. In my capacity as such I sat with the Home Mission Committee of the Synod of Manitoba and the North West Territories at Winnipeg in the month of March last. At that meeting the name of Rev. Iwan Zacklynski came up as being employed by the Presbyterian Church for missionary work amongst the Galicians in Manitoba and Saskatchewan. Upon inquiry I ascertained that he was the priest of that name who had been at the Galician settlement near Star, and in consequence of statements made by me at that meeting he was dismissed from the employment of the Presbyterian Church at the close of March last.

[Mr. MacDonald objects to this evidence on the ground that it is hearsay, and in any event not relevant, and reflecting on the private character of one of the Plaintiffs, and relates to matters subsequent to the commencement of this suit.]

Judge Scott: I receive the evidence subject to this objection.

Cross-examination.

Cross-examination. To Mr. MacDonald:

Q. Mr. McQueen, will you tell me if this position I take is correct in your opinion: The word "Catholic" is used in two entirely different ways; in one way it can be applied to any Church; for example, we Presbyterians speak of the Holy Catholic Church and of the Holy Catholic faith ——? *A.* I am here to give evidence on the case, not to give you definitions. I refuse to give any.

Q. You decline to answer similar questions as to the word "Orthodox"? *A.* I refuse to do so.

No. 40. Rev. Iwan Zacklynski.

Mr. Short tenders the following portions of the examination for discovery of Plaintiff Zacklynski, taken on the 14th of June, 1901, namely:—

"I, myself, belong to the Greek-Catholic Church, which is united with "Rome. The head of my Church is the Pope of Rome. Any member of the "Orthodox Church is strongly opposed to the claim of the authority of the Pope. "I told these people when I went there the very first day that I was independent "of the first French bishop; that I had nothing to do with him. They asked me "if I got any help from the Bishop of St. Albert, and I said I never got a cent from "him. About the 18th of December I set about appointing provisors. I asked "the new provisors to take the oath of office. I also made nine more as a com-"mittee of management. These also I asked to swear. That was in church on "Sunday. Mike Polushie and Wasyl Feniak said, 'No, no, that is for the French "'bishop, do not swear.' Wasyl Feniak was one of the nine I had appointed. "Neither provisors or trustees swore. They all refused. I wanted them to "settle with one another inside of twenty-four hours. I told them several times

" I would leave. I have looked up the meaning of the word ' Catholic ' since being " here before. I will bring the bishop to tell this to-morrow. It means ' Union " ' with Rome ' in religion."

Also the following portions of the examination of Plaintiff Pasemko, taken on the 15th of June, 1901.

Q. What did you bring this suit for ?

[Mr. MacDonald objects to question as statement of claims gives the information asked. An examination can only be as to facts and not to reasons operating on Plaintiff's mind.]

Objection sustained.

Q. On what grounds do you bring this suit ?

[Mr. MacDonald objects on the same ground.]

Q. What claim did you make against the Defendants ?

[Mr. MacDonald objects on the same grounds.]
Examiner rules question improper.

I have been in the country about two years. The Pope of Rome is the head of my Church. The church at Star was started when I came to this country. They (the Trustees) told me that there had been some trouble with the French bishop at St. Albert.

Q. Did they tell you what the trouble was ? *A.* Yes.

Q. What did they tell you ?

[Mr MacDonald objects on the ground that the statement made by Defendant to this Witness cannot be evidence unless elicited by Plaintiffs as evidence against Defendants.]
No ruling required.

A. They told me that the French bishop wanted the land in his name, and they demanded that the land be given to them and the French bishop turned it over to them. The greater part of the expense of building was paid before I came here. I know that my Church is subject to the Pope of Rome. I cannot read or write. I don't know anything about Father Korchinskey's Church. I don't know what is the belief of his Church. I don't know whether his Church is the same as mine or not. Referring to my statement above that I was appointed Trustee at that meeting—I meant I was appointed one of a committee, which means provisor. (Mr. MacDonald explains that the Witness made a mistake, which, when explained to him, brought to his mind that he was first appointed provisor.)

Also the examination for discovery of the Plaintiff, Petro Melnyk :—

" I am one of the Plaintiffs. I belong to Rome. The Pope is the spiritual " head of my Church. My Church is known as the Uniate Church. I don't " know the belief of Father Korchinskey's Church. I neither read nor write. " I knew Father Alexandroff and I went to his church. I saw another priest with " Father Alexandroff but I did not know his name. I and Polushie went to his

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" services. I do know that the French Bishop of St. Albert wanted to get the land. " The French bishop came to Star and said, ' What is the matter with you, you " ' don't stay with your own religion ? ' The bishop said, ' If you will stay with " ' your own religion I will get the land for you and help you out on the building.' " The bishop said, ' Whatever you pray for I will give you.' It was Frank Oliver " who got us this land. The whole Congregation except the Roman Catholics " did not want the Roman Catholic bishop to have anything to do with it The " church is built of spruce logs. We got the permit from the Government and got " them wherever we could find them. Polushie went and paid for a permit. The " others I don't know. I know that the permit was sent out for the people of the " church to sign. I was told that the paper was the application for the permit. " I was at the meeting last fall when Father Zacklynski appointed provisors. He " appointed twelve."

Plaintiffs' Evidence in Reply.

No. 41.
Ilko Sennatowicz. Examination.

Reply.

Ilko Sennatowicz. (Philip Mohr, Interpreter.) To Mr. MacDonald :

I came here from Galicia over seven years ago. I was never at a meeting at Sowka's prior to the coming of Father Dymytrow. I was at a service at Halkow's, held by father Dymytrow on the Tuesday after Easter, the year he was there. Sowka, Spaczinski and Hawryleka conducted the singing. The house was filled.

[Mr. Short objects to this statement on the grounds that the Plaintiffs' Witnesses had already testified as to the time at which the consecration took place, and Exhibit A also is evidence of the fact, and Plaintiff is therefore precluded from giving further evidence. Mr. MacDonald contends that it is properly evidence whether that as the time of the consecration was made no part of the Plaintiffs' case and the date became material only by reason of the evidence given on behalf of the Defendants. I rule that the evidence is not properly rebuttal evidence, as Plaintiffs' Witnesses have given evidence on the point, and Exhibit A must be considered as such evidence, and I therefore strike it out.]

I live about a mile from the church in question. I never attended any services held by Father Alexandroff or Father Kamneff. I attended every service that Father Dymytrow held during his two visits to our neighbourhood.

[Mr. MacDonald proposes asking Witness whether or not he heard the prayer for the Pope used in services in the church in question. He contends that this is evidence in rebuttal, because Plaintiffs have merely given evidence to show that such prayer was a part of the regular service in the Uniate Church, and that the regular services were used in that church, and that some of Defendants' Witnesses have stated that they did not have that prayer used in these services. I hold that the evidence is not evidence receivable in rebuttal.]

[Mr. MacDonald proposes calling evidence to show the nature of the oath which Father Zacklynski required the provisors to take. Mr. Short objects on the ground that Plaintiffs have gone into evidence as to the oath

and are therefore precluded from giving further evidence upon it. Mr. MacDonald points out that the Plaintiffs' evidence was only as to the fact of an oath having been required and not as to its nature, Defendants having given evidence as to its nature, Plaintiffs should be allowed to rebut that evidence. I allow the evidence to be given by way of rebuttal.]

I was present at the meeting at which Father Zacklynski appointed provisors. I heard him ask them to take an oath. He told them to swear that they should not go to the Russian or French Church, but that they should stay with their own Church. Wasyl Feniak asked him why they should swear that. Father Zacklynski told them because they should stay with their own Church and not go with the Russian or French Churches. Feniak told them that there was no use in swearing that as they were going to stay with their own Church. At that service Father Zacklynski told us that if we did not pay him his salary he would have to leave us.

Cross-examination.

Cross-examination. To Mr. Short:

At that meeting some of the members told him that they did not want him to stay. They started to quarrel and I left the meeting. I belong to the Uniate Church. I was at only one service of Father Korchinski. I was never at a service held by Father Alexandroff nor by Father Skebinski. I do not know Father Alexandroff. I never heard of him or of Father Kamneff. I lived at the Star settlement ever since I first came to this country. I was there during the fall and summer of 1897. I came to this country in 1895. I was sick at the hospital at Fort Saskatchewan in 1896. I was never at a service at Nymyrski's. I do not know where he lives. I signed a paper before Mr. Holmes, J.P. The Defendant Polushie's son Wasyl translated it to me. I signed it by making my mark to it. I swore to the paper before Mr. Holmes. He asked me if I was at Petro Melnyk's when the money box was taken away from there and I replied that I was not. He also asked me if I was at Sowka's place when the meeting was held there, and I replied that I was not. I deny having sworn in that paper that I was a member of the Greek Catholic Church. Wasyl had told me that if I did not go before Mr. Holmes and sign that paper he would send the police after me. I never joined the Orthodox Greek Church. I always stayed with my own religion. I do not know where Sowka lived. I know him. I drove with the Defendant Polushie to Halkow's house when Father Dymytrow was holding service there. Father Dymytrow was staying with the Defendant Melnyk at that time. On his second visit he stopped at my place. I went only once to Halkow's with the Defendant Polushie. I was at Halkow's only once. Sowka was there at that time. He was one of the three who led the singing. I never heard Sowka read a letter at that time or at any time at Halkow's. There was only one meeting about the appointment of provisors. If there was more than one meeting I know nothing about the others.

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Plaintiffs' Evidence in Reply.

No. 42. Petro Melnyk. Recalled.

Petro Melnyk, recalled. To Mr. MacDonald:

At the meeting at which provisors were appointed by Father Zacklynski, the oath that he required them to take was that they should stay with their own Church and not to join the Russian Church. Feniak said that he did not want to swear as he belonged to his own Church and that he was going to stay with it.

[Mr. MacDonald proposes asking this and other Witnesses as to whether, at the first services held by Father Alexandroff, certain persons had not renounced the Pope and his errors. Mr. Short objects on the ground that evidence was given by the Plaintiffs to show that the Plaintiffs and those in sympathy with them had remained members of the Uniate Church. I hold that the evidence is admissible to rebut evidence by Defendants of special acts of renunciation.]

It is not true as stated by Lakusta and others that at Father Alexandroff's first service I knelt down and renounced or abjured. I did not see any other persons from the Star settlement do anything of that kind at that meeting. Techkowski was not present at the meeting at Melnyk's at which Korchinski was invited to be pastor. At Father Zacklynski's last service he told us that he would have to leave unless we paid him his salary. It is not true, as stated by Wasyl Feniak, that I, at the meeting at Fedor Melnyk's, at which Father Korchinski was present, agreed to accept him as my pastor.

No. 43. Nicola Spaczinski. Recalled.

Nicola Spaczinski, recalled. To Mr. MacDonald:

I was not present at Sowka's or Halkow's before Father Dymytrow's first visit. I came to this country about the first of March, 1897. It is not true, as stated by one of the Witnesses for the defence, that, at a service of Father Alexandroff, I abjured the Pope and his errors. When I was present at Father Alexandroff's first service he asked that those who belonged to the Russian Church should hold up their hands. I did not see any of the members of our Church hold up their hands. I was present at the meeting at which Father Zacklynski appointed provisors. What he asked them to swear to was that they should stick to their own religion and not go over to the Orthodox Russian Church or to the Roman Catholic Church. Feniak declined to swear to this, stating that he belonged to his own Church, and that he would stay with it without any swearing. At that meeting Father Zacklynski stated that if we could not pay him he could not stay. He did not state positively that he was going to leave.

No. 44. Paulo Pasemko. Recalled.

Paulo Pasemko, recalled. To Mr. MacDonald:

I was present when Father Zacklynski asked the provisors to take the oath, but I was not present when the twelve were appointed. The oath he asked them to take, was that they should stay with their own religion and not go over to the Russian Church or the French Church. Feniak objected, saying, "There is no

"use to swear, because we belong to our own religion and we are going to stay "with it." Father Zacklynski stated at that time, after the service was over, that, if they did not pay him the $5 each per year, he could not stay.

No. 45.
Iwan Melnyk.
Recalled.

Iwan Melnyk, recalled. To Mr. MacDonald:

I was present when Father Zacklynski asked me and two other provisors to take an oath. The oath he asked us to take was that we should stay with our own religion and not to go to the Russian or French Church. He told us at that meeting that if we did not pay him the money we promised him he would have to leave.

Defendants' further Evidence.

No. 46.
Kenneth M. Morrison.
Examination.

Kenneth M. Morrison. To Mr. Short:

I am the subscribing Witness to the execution of paper now shown me (marked X 11 for identification) [Exhibit 9]. Portions of the document are in my handwriting, or all the written portion of the document from the word "Church," where it first appears, down to the word "remarks"; also the words "Greek "Orthodox"; also the names of the persons executing, their post-office address, and the date of the document. The parties executing it told me they could not write, and I therefore appended their names. They put their hands on the pen while I made the cross on each name. They always came to me whenever they had any writing to do and asked me to do it for them. They brought this paper to me and told me to write out the application for them. William Polushie acted as their interpreter, and I filled it out as he told me they wanted it. I asked him what the name of the church was, and he told me it was the Greek Orthodox Church. I never had any interest in that Church.

To Mr. MacDonald:

I am satisfied that Polushie gave me the name of the church; I did not know the name myself. I did not supply the name myself by his telling me that it was the same kind of Church that Father Alexandroff and Kamneff belonged to. The words on X 11 (Exhibit 9) in blue pencil, "State whether Catholic or "Greek Orthodox" were on the document when I filled in the blanks, but I do not remember whether the words "Greek Catholic Church" in blue pencil were then on it. Polushie did the talking for the others. I cannot recall that he mentioned the name of any particular priest.

Mr. Short tenders document X 11 as evidence. After hearing Mr. MacDonald I admit it as evidence. Put in and marked Exhibit 9.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

Exhibits at Trial.

Exhibit A.

No. 47. Exhibit A. Admission as to differences between Uniate and Roman Catholic Churches, 17th May, 1902.

The Plaintiffs hereby admit that the Greek Catholic Church, except in being subject to the Pope and in being identical in creed with the Roman Catholic Church, uses, with some minor differences, by permission of the Pope, the Greek or Eastern forms of worship, rites, ceremonies, vestments, and calendar, and the Greek or Eastern liturgy in the old Slavonic language, similar to those of the Greek Orthodox Church.

Dated at Edmonton, May 17th, A.D. 1902.

(Sgd.) C. DE W. MACDONALD,
Plaintiffs' Advocate.

Exhibit B.

No. 48. Exhibit B. Admission as to respective creeds of Uniate and Orthodox Churches, 21st May, 1902.

It is admitted that the differences in creed between the Greek Catholic Uniate Church and the Church whereof Reverend Father Korchinski is a priest are as follows :—

The former holds and the latter denies the following dogmas :—

1. The Infallibility and Supremacy of the Pope.
2. The Immaculate Conception of the Virgin Mary.
3. Purgatory.
4. The procession of the Holy Ghost from the Father and from the Son.

Dated at Edmonton, this 21st day of May, A.D. 1902.

(Sgd.) C. DE W. MACDONALD,
For Plaintiffs.

(Sgd.) WM. SHORT,
For Defendants.

Exhibit C and D.

No. 49. Exhibits C and D. Russian documents—omitted.

Russian documents—omitted.

Exhibit E.

No. 50. Exhibit E. Letter from people to priest, 1st April, 1900.

Beaver Creek, April 1st, 1900.

Glory be to God and Jesus Christ.

Spiritual Father,

We have received a letter from the Spiritual Father, but we could not at once write back because our settlement is scattered. We are all Uniates near together on Ranges 20, 19, 18, 17 and 16, in Townships 57, 56, 55, 54 and 53, and are moving towards the south. There are over 300 families of us. Rabbit Hills

is to the west of us 70 miles. Among the Bukowinians we can find about 40 families of Uniates, and there are of them in all 300 families, but the Bukowinians are also thinking of building a church. We are 1,900 miles from Winnipeg. Edmonton is a town of 50 miles from us, and there is another town, Fort Saskatchewan, 26 miles off. Our post-office is 3 miles from the church, and near the post-office are two stores. For the journey we will send a ticket for the Spiritual Father. We require to have you, Rev. Father Zacklynski, permanently for our pastor, and we will pay you a yearly salary of two dollars per family. Each half-year we will bring the money, besides the revenue from fees. We have a church finished. In the church we have an altar and symbolium and cross and two banners. Of church books we have the gospels and ritual for precentor and viaticum and further the collects. The presbytery is not yet finished, but we shall finish it in a short time, but for the meantime we have a suitable residence 100 paces from the church. We have a very good farm for the Spiritual Father, the same land on which the church is built. We have a precentor. The soil is black and sandy, pretty fertile. We have plenty of forest. There no hills, but a plain. One can come to us at any season as there are no large streams. There is a large river, but this can be avoided. We request the Rev. Father John Zacklynski to be with us before Easter. Even if we cannot be confessed, we beg of you at least to consecrate our Easter bread.

You request our signatures and therefore we sign :—Iwan Pylypiw, Michael Melnyk, Michailo Pulisczy, Wasyl Strasak, Leon Proczinski, Alexander Karpec, Paylo Fedorku, Samian Wedink, Iwan Welesczuk, Jan Danczuk, Stefan Panicz, Iwan Kozhuk, Nikita Briks, Wasyl Hryn, Michal Kasupski, Joseph Proczinski, Fedor Palamarczuk, Nikolai Spaczinski, Fedor Weleszczuk, Iwan Starko, Onuphry Kulczetzki, Nikola Melnyk, Petro Stephura, Fedor Melnyk.

Exhibit F.

No. 51. Exhibit F. Examination for discovery of Defendant Rev. J. Korchinski.

Portions of the examination of the Defendant, the Rev. James Korchinski, for discovery put in by Plaintiffs.

The Bishop of our Church in America has on his letter heads, " The Bishop " of the Russian Orthodox Church in America." I am aware that my Church in Canada desires corporation in Canada as " The Russian Orthodox Church in " Canada," but this is the name of a corporation and not the Church. . . . It is not true that the Eastern Churches use the name Orthodox and not Catholic in the names of their churches. They use them both. . . . I have never been in Galicia. . . . There is no bishop of my Church in Galicia. . . . There are certain great differences in the Creed of the Roman Catholic Church and the Eastern Churches. In the Nicene Creed occur these words, " The Holy " Ghost who proceedeth from the Father and from the Son," this is as used by the Roman Catholic and the Protestant Churches. In the Eastern Churches, including my Church, the words " and from the Son " are not put in. My Church also denies the doctrine of the Immaculate Conception of the Virgin Mary, while the Roman Catholic Church holds that doctrine. . . . The Polish people as a

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No. 51. Exhibit F. Examination for discovery of Defendant Rev. J. Korchinski —*continued.*

nation are Roman Catholic. . . . It is a fact that as a result of these difficulties, a union was arrived at some three centuries ago, whereby the Greek Catholic bishops of Galicia agreed to acknowledge the supremacy of the Pope and adapt in the Creed the words " and from the Son," with the provision that they should be allowed to retain their own dogmas, rites, ceremonies, liturgy, vestments and calendar, and that there should be for all time to come separate Greek Catholic and Roman Catholic bishops, and it is a fact that there are now in Galicia both bishops under the Pope. I do not know whether the Metropolitan at Lembourg is the head of these Greek-Catholic bishops or not. . . . There is no question but that what is called the United Greek Catholic Church in Galicia recognises the Pope as the head of its Church, and uses the words " and from the Son " in the Creed, and it is to that Church that the Little Russians in Galicia belong. I am sure that there is no bishop of the United Greek-Catholic Church in America, but there are a number of these congregations in America, there are about 100,000 people of this faith in America. Of the priests over these people, some are controlled by themselves, others are controlled by the bishops of the Roman Catholic Church. None of these priests are under my Bishop Tikhon, except in cases where they have come over. There is no doubt but that in America, my Church and the Church above spoken of are separate. I came to Alberta the 12th of Nov. 1900. I came here by orders of my superior Bishop Tikhon. When I got here I found that there was a large church in course of construction at Wostok, near Nymyrski. The title to the land on which the church stands is in the name of Bishop Tikhon, the head of my Church, and part of the money for the erection of that church was sent by Bishop Tikhon. I think that more than half of my congregation there came from Bukowina, and when they were there they belonged to the Russian Bishop of Czernowitz. I prepared a chapel in my own house and consecrated it and have been using it. When I arrived here I heard that Father Zacklynski had a congregation at Edna, and I know that after I went to Wostok Father Zacklynski continued to hold services at Star up to the 27th of January. I learned on the 27th of January that he had left there, and given up the position of priest. Iwan Pylypiw told me this, on the same day others told me this. Their names are Michailo Polushie and Michailo Melnyk. I can remember no others than these three who told me. Iwan Pylypiw came to my place and told me this. . . . They said, well it is good for us if we have you for our priest as you have a bishop. I said, you take time ; remember you have Roman Catholic doctrines. If you renounce them you can become members of my Church, because it would be better for me to have less sheep and sure ones than many and wolves in sheep skin among them. I explained to them that it was not necessary for them to change their religion, but only to renounce that part that did not belong to Greek Catholic Orthodox faith such as Purgatory, Infallibility of Pope, and the words " and from the Son " from the Creed. They then asked me, " the sacraments " and the services are not different are they ? " and I assured them not. I then told them that when they were ready to renounce the Roman Catholic doctrine, I would be ready to serve them. They then asked me if they did so would I take charge of the church, and I said I would if they had a right to the church. They explained to me that they had a right, that they had built the church.

I said if the members of the church who helped to build it up to the time it was built would consent, I would take charge of the church. They asked me if some of the members who want to be Roman Catholics, or their wives Roman Catholics, what would they do, and I explained that if the majority of the members were in their favour, we would go to the Major at the Fort, or to some one who could explain how the law stood. I explained to them that in the United States the rule was that every member would have to consent. Pylypiw then said to me that if we will go, then everybody afterwards will go. They explained to me then that Pylypiw, Polushie and Mike Melnyk held the title to the lands, but they did not tell me that they had on that day taken the key and the money of the church. I first held service in that church at Star on the 2nd day of February. I was asked to go by the Trustees Pylypiw, Polushie, and Melnyk; it was on Saturday evening. There were about 40 people there, men, women and children. These 40 were people who I believe were people who had formerly gone to that church. The Trustees and some others had on the day before renounced their Roman Catholic doctrine in my church at Wostok before the whole congregation. Wasyl Feniak, Fedor Melnyk, Michalo Melnyk, I think, was another. I cannot remember without looking at my book what others there were. Three others renounced their Roman Catholic doctrine that night, February the 2nd, at Star. These were Kuzminkuk, and the wives of Feniak and Polushie. I held services again the next day, February the 3rd. There were no other persons renounced on that day, but there were some of them said the day before that if they were satisfied with the liturgy they would renounce. . . . My next service in the church was on the 8th day of April, which was one week before the Russian Easter. . . . On the 28th January there was another meeting at Mike Polushie's house, about the same people were present who were at Melnyk's house the night before and they again asked me to become their priest. I asked them to sign a paper and send it to my bishop asking to be admitted to my Church, and they did so. There was never any meeting after that at which I was asked to be their priest except in the church on the 22nd of February. No one made any protest against my being priest, and I preached especially on Orthodoxy as opposed to Roman Catholic doctrines. These people of the Congregation at Star belonged before I came to what is known among themselves as Uniatz—this word means in English "united"—and were of the same church of which I said there were about 100,000 in the United States. . . . The Uniate Church uses in its service the Creed of the Roman Catholic Church. When I referred to the Bishop of Czernowitz as the Russian bishop, I did not mean that he was Bishop of the Russian Church, but was a Russian by birth. . . . On page 256 of my ritual book appears this line, "Do you wish to unite with the "Orthodox Greek Russian Church?" There is another question on the preceding page which I say is connected with the above. "Do you wish to be and live in "union with the Orthodox Catholic Church?" On the last line on the last-named page appear these words, "Thy servant who is worthy to come to Thy Holy "Orthodox Church." From these two passages I have shown you that my Church is the Russian Greek Catholic Orthodox Church. I cannot show you any passage in the book in which that whole name occurs in that form, but my explanation is this. The word Russian gives the nationality, the word Greek Catholic is used

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No. 51. Exhibit F. Examination for discovery of Defendant Rev. J. Korchinski —*continued.*

to show that it belongs to the Eastern and not the Western, and Orthodox shows the denomination of the Church. In my certificate of appointment, signed by my bishop, my Church is styled the Holy Orthodox Russo-Greek Catholic Church. I never heard of the word Orthodox or Pravo-Slavni being used in the name of the Uniate Church. I never met with Uniates until I came here, I had simply read of them. The word Orthodox is used in the name of all the Eastern Churches, even those that my Church calls schismatic. I have never heard of the Roman Catholic Church using the word Orthodox in their name. I have never known of a Church which acknowledges the authority of the Pope that calls itself Orthodox. . . . The only change I made at Star church was to renew the candles, wax for tallow. I took away a statue, they are never used in our Church, they are used in the Roman Catholic. I instructed somebody to ask the police to be at the church on Easter Sunday to protect me. The sergeant and two men came. I have not once held service there since Easter Sunday. I claim I have the right to go there and hold church so long as my Congregation show it to me as a place to hold services. If the law will show me that I have not the right, after that I will not claim the right.

Portions of the examination of the Defendant Korchinski put in by Defendants as explanatory of the portions put in by Plaintiffs :—

When they renounced the Roman Catholic Church they were Greek-Catholic Orthodox, because they were that before they became Roman Catholics. In explanation, when one of my people go to any other priest except a Greek-Catholic Orthodox priest and confess and then returns to me, I make them renounce all doctrines and then confess as he had always confessed, and I then give him communion. . . . I do not remember being asked whether the bishop of my Church has on his letter heads, " The Bishop of the Russian Orthodox Church of " America." If I said so it is not correct. His title is " Bishop of North America " and the Aleutian Islands." I have some of his letters at home, and on them are the words, " Bishop of North America and the Aleutian Islands." . . . When I spoke of my Church desiring corporation in Canada as " The Russian Orthodox " Church in Canada," I mean that Mr. MacDonald told me so some time ago. When I ask for incorporation for my Church it will be as " The Greek-Catholic Orthodox " Church in Canada." . . . When on page four of my examination I say that there should be separate Greek Catholic and Roman Catholic bishops, I mean Greek Uniate bishops and Roman Catholic. There is no such thing as Greek Catholics in union with Rome. When I used the expression, " Greek Catholic bishops " on line 31 of page 4 of my examination, I should have said Greek Uniate bishops . . . When I say that there are Orthodox Greek Catholic churches in Galicia, I can show you my books and papers printed to show you that when on page 5, lines 8 and 9, I used the expression, " United Greek Catholic Church," it was an error. It should have been the " Greek Uniate Church," and wherever in the examination I appear to use an expression to the effect that the Uniate Church is called the Greek Catholic Church, it is wrong, the right name is Greek Uniate for the Church that is united with Rome. When Iwan Pylypiw came to me and

asked me to be their priest, I explained to him my belief. I was just new to the country and these men were all strangers to me. He said his faith was the same as mine. I went on to explain the difference between my Church and the Roman Catholic, and he explained that his belief was the same as mine. I said to him that if his belief was that of the Roman Catholic Church, I could do nothing for him, but if he said it was not so, I could administer the sacraments. The other Trustees and all the party that came to me to ask me to be their priest claimed the same thing. They told me that that was always their belief. I asked them to renounce Roman doctrines, because they had a Roman Catholic priest, Father Zacklynski, and I did that to make sure they understood. It is a rule of my Church that I must examine a man who applies to join it, if he has gone to any other Church, I must ask him to renounce the doctrines of that Church. If a member of my own Church go to another Church and take communion, I must ask him to renounce the doctrines of that other Church. The people also asked all about my service to know whether it was the same as they wanted. When I say on page 6 that I heard Zacklynski had a congregation at Star, I mean that I heard that he was serving among my people there. . . . When on page 14 I say that before I came the Congregation of Star belonged to what is known among themselves as Uniates, I mean that they were first Orthodox Greek Catholic and took a priest of the Uniate faith along with the Uniates of Beaver Lake. . . . When on page 20 it is stated that I took away a statue. It is not the time I objected to its being there and the people took it away.

Exhibit G.

No. 52. Exhibit G. Examination for discovery of Defendant Iwan Pylypiw.

Portions of examination of Defendant Pylypiw for discovery put in at trial by Plaintiffs, showing explanatory portions put in by Defendants in brackets, thus: [].

I am one of the Defendants. I can read and write a little. This paper shown to me and marked " A " for identification was signed by me ; the first signature is mine. Karpiec and Petro Stephura wrote it in Iwan Danczuk's house. It was read, but I don't know if it was read as it was written. Karpiec and Spaczinski were sitting at a table and Karpiec read it. The reason I say it may have been read different from the way it was written is that they have fooled me before on that religion. There were about 50 people there. Spaczinski went around about a week getting the people to come together to write for a priest. Spaczinski and Karpiec were talking over what should go in the letter and we were listening. Some were agreed to send the letter and some were kicking. Some signed and some not. I don't know the handwriting of Michailo Melnyk. I remember Michailo Polushie was there. I did not see him sign. Iwan Danczuk was there. I remember when Father Nestor Dymytrow was here four years ago. I remember of him consecrating a cemetery when he was here, and then we started in to make a collection to build a church. I was at the consecration of the cemetery. I do not know if he was a priest of our Church or not. He held service when he was there in the school house. I went to the service. The service was not exactly the same as in the old

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No. 52. Exhibit G. Examination for discovery of Defendant Iwan Pylypiw —*continued.*

country. I could find out right away that there was a little difference; he wore a different kind of cap. I agreed to help with the building of the church when they started the collection. Those that were going to help gave their names to Spaczinski. Spaczinski at that time generally did the writing for the church regarding the collections. From that time till the completion of the church there were many meetings to talk it over. I was generally there, but not every time. . . . Father Alexandroff was only there a few days. I went to hear him once. He held his service in the open air at Fedor Nymyrski's place, that is where the Orthodox Church now stands. Father Alexandroff did not confess me. I did not ask him to. . . . I knew Father Tymkiewicz. He was there, but I cannot say as our priest or as a missionary. I went to his service when I had time. Father Tymkiewicz stayed there several months; he held service in a private house. At this time the entry for the land had been made in the name of the French bishop, and all of us people did not like this, and all wanted to get the land for the Congregation in the name of Trustees, so it would not be in the name of the French bishop. Father Tymkiewicz said the same thing and he helped us to get it in our names. I was satisfied with Father Tymkiewicz and I think the two other Trustees were also. We had no fault to find with his services. The service I don't know exactly to be the same as in the old country. . . . I was in the Land Office when the entry was made in our name. We three old Trustees, Father Tymkiewicz and an interpreter were there. The assistant bishop was there, too. He agreed to the change being made; we made him agree. Polushie had the certificate of title after it was obtained. I have seen it and heard it read in Russian; Wasyl Polushie read it. The English words "Greek Catholic" mean in Russian, "Graeco-Katoleciske." The priest said Greek Catholic Church when talking in the Land Office. After the paper signed by me was sent to Father Zacklinsky, another letter was written by Petro Zwarycz. We had a meeting to get him to write that letter and I was there and we talked over what was to be put in the letter. There were from 10 to 15 people there. Zwarycz read the letter when he had written it. . . . I was in the church when the provisors were appointed. Father Zacklinsky came out with a paper and read the names of 12 persons that were to be appointed a committee, and of those 12, three were to be appointed provisors, Pavlo Persemko, Mike Melnyk and Mike Podruski. He then said the Trustees would have to be changed [and the church given into Roman hands]. He said that Mike Podruski was to be the Treasurer and have the keys. The people said they wanted Feniak to have it, and some of the people said at a meeting a day or two later that they wanted the old Trustees to hold on to office. . . . The old Trustees gave the key of the cash box to Mike Podruski. I don't know if Fedor Melnyk gave the box to Podruski or not. I was at the meeting at Fedor Melnyk's house on January 27th, with Father Korchinski. We Trustees on that occasion and some others asked Father Korchinski to be our priest. He said if all or nearly all wanted him to be he would be. The old Trustees never called a meeting after that to discuss about Father Korchinski being our priest. I do not know of Father Korchinski getting any further invitation to be our priest beyond what was given him this night.

Exhibit H.

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

No. 53. Exhibit H. Examination for discovery of Defendant Nicola Polushie.

Portions of examination of the Defendant * Nicola Polushie for discovery put in at trial by Plaintiffs, showing explanatory portions put in by Defendants, in brackets, thus [].

Qy. Michailo.

I did not know anything about the Uniate Church in Galicia. There was only one church in the village. There are some people in Edna who came from the same country as myself, Nicola Piczkowski was one of them. I call my Church in Galicia, Pravo Slavni, because the priest uses the words Pravo Slavni before the word Christians when he elevates the Host in the Mass. . . . I cannot read or write. Peter Zyrolitz wrote a letter to Father Zacklynski and I don't know what was in it. I remember being present with Iwan Pylypiw and Mike Melnyk when a paper was signed by me. They were sitting around a table and told me to put my mark on it. Stephura was there also. Stephura wrote a paper. I don't know if that was the paper I signed. It was in Mike Melnyk's house he wrote it, on the table. I didn't see more than one paper. Wasyl Melnyk, Fedor Melnyk and Wasyl Polushie were also there. I did not hear the paper read. I did not hear them talking about what was to go in the paper. I don't know what was in the paper. The paper was to go to Zacklynski, it was a letter to him asking him to come and sending him $60.00. . . . I know my Creed. The Holy Ghost proceeds from the Father only. This is the way I said it in Galicia in the town I lived in. I said in reciting my Creed in Galicia that the Holy Ghost proceeded from the Father and the Son. I first said that the Holy Ghost proceeds from the Father after I heard that the other (Father and Son) was not true. It was Rev. Father Alexandroff first told me that it was not true that the Holy Ghost proceeded from the Father and the Son. . . . I was at the Land Office at the time when the paper about the land was changed from the French bishop to the Trustees; Pylypiw and Mike Melnyk were with me. Billy Polushie interpreted. I heard Billy speaking English. I understand the word Catholic in English means Katholiski in Russian. I do not know what the English word is for Pravo Slavni. I have heard the word Orthodox but I did not know that it meant Pravo Slavni. I have heard the certificate of title for the church read. My son Wasyl read it to me in Russian. It read the Greek Catholic Orthodox Church. When Wasyl was reading the deed to me he read the words Greek Catholic. I knew that Father Zacklynski was coming here to be our priest before he came. I was there the day the church was consecrated. I saw Iwan Danczuk give Father Zacklynski the bread and salt on a tray but I did not see the key. I do not know whether the key was on the plate or not. I don't know what the giving of the bread and salt means. I saw it done in the old country the same. I do not know who asked Iwan Danczuk to do this. I promised Zacklinski if he would do the work the way the Lord God wants it done I would give him $2.00 a year. I can't remember the date of the consecration. I went regularly to the church up to the month of December. There was no service when Father Zacklinski was not there. I was good friends with Father Zacklinski up to the time that I found that he did not do his work right. . . . [Father Zacklinski appointed a committee of twelve besides we Trustees. When they came to the church he put out a cross and two candles and told them to swear. The twelve men said, "Let the Trustees swear and then we will swear."

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

No. 53. Exhibit H. Examination for discovery of Defendant Nicola Polushie —*continued.*

I said I had been sworn in for three years and I did not want to be sworn again as I did not know what for. When the Committee saw this they did not swear. Father Zacklinski said, "I throw up my job." I did not know that three out of this twelve were to be called provisors.] I do not know that previous to the appointment of the Committee of twelve Father Zacklinski had accused Iwan Pylypiw of stealing money from the church. Mike Melnyk kept the cash box up to this time. Sometimes it was at Fedor Melnyk's, sometimes at Feniak's and my house. There was no one man that was Treasurer, it was we three Trustees. I know that the old Trustees handed over the money to Podruski because I was sick in the hospital. Podruski never had the money before. I can't remember whether I saw them giving it to him or not. I don't know why they gave it to him. They gave the box to Podruski because he was to go around and collect some money. I do not remember a meeting in Fedor Melnyk's house on the 27th of January when Father Korchinsky was there. I remember of being in Fedor Melnyk's house when Father Korchinsky and others you have named were there. We asked Father Korchinski to come and be our priest because his religion was the same as the people's.] I belong now to Father Korchinski's Church. I cannot remember just when I went to it. It was after we talked to Father Korchinski in Fedor Melnyk's house that I went over to his Church. . . . I did kiss the Cross for some purpose before Father Korchinsky. I don't remember taking an oath from Father Korchinsky.

No. 54. Exhibit K. Certificate of Title, 6th July, 1899.

Exhibit K.

Certificate of title Number 60 V., dated the 6th July, 1899, issued out of the Land Titles Office for the North Alberta Land Registration District, and showing a clear title in fee simple to legal subdivision one of section twenty-seven, township fifty-six, range nineteen, west of the fourth meridian, to be vested in Mikel Pulischy, John Pylypiw and Mikel Melnyk, all of Edna, in the provisional district of Alberta, in trust for the purposes of the Congregation of the Greek Catholic Church at Limestone Lake, in the said district.

No. 55. Exhibit L. Letter, Plaintiffs' advocate to Defendants, 14th March, 1901.

Exhibit L.

March 14th, 1901.

Rev. Father Korchinski,
Michael Polushie,
John Pylypiw,
Michael Melnyk.

Dear Sirs:

I am instructed by the Rev. John Zacklynski, Paylo Pasemko and Petro Melnyk, the legally elected Trustees of the Greek Catholic Church at Edna, to demand of you the immediate delivery to me as their solicitor of the certificate of title for the church lands being Number 60 V., issued July 6th, 1899; further

that you deliver to me for them at the same time the key of the church. I also hereby notify you that I am about to commence an action against you jointly claiming $5,000 damages for your unlawful conduct in taking possession of the church, excluding its lawful appointed clergyman and installing a minister of another Church to hold services therein. These acts are in the highest degree illegal. You are hereby notified not to enter said church or attempt to interfere with its management in any way from this date.

If you do not at once, this very day, comply with this demand for the delivery of the certificate and the key, legal proceedings will be commenced against you as quickly as the papers can be made out.

I am, dear sirs,

Your obedient servant,

(Sgd.) C. DE W. MACDONALD.

Exhibit M.

No. 56. Exhibit M. Letter, Rev. L. Kamneff and Rev. V. Alexandroff to Hon. R. A. Ruttan, 1st May, 1898.

1-5-98,
San Francisco, Cal.

Hon. R. A. Ruttan,
Edmonton, Alta.

Dear Sir:

In reply to your favour, in which you kindly inform us that the land of which we had applied to you last July, can be obtained for the use of your Russian Orthodox Mission in Canada, permit us to thank you very much for your kindness and sympathy.

Together with this we have to send you the formal certificate of the chief body of our mission in America—his Eminence the Right Rev. Nicholas, Bishop of Alaska and Aleutian Islands, and the fee of ten dollars.

Yours very truly,

(Sgd.) Rev. L. KAMNEFF,
Rev. V. ALEXANDROF,
Secretary.

Exhibit N.

No. 57. Exhibit N. Letter, Defendants' advocates to Plaintiffs' advocate, 15th March, 1901.

Edmonton, Alta, 15th March, 1901.

C. de W. MacDonald, Esq.,
Advocate, &c.,
Edmonton.

Dear Sir:

Your letter to Rev. Father Korchinski, Michael Polushie, John Pylypiw and Michal Melnyk has been handed us for reply. We may say that the three latter are the duly appointed Trustees of the Orthodox Greek Catholic Church and have been from the beginning of the existence of that body as a Church at

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Limestone Lake. They were the prime mover in the getting of the land allotted to that church, and in the building of a church for the worship of their religion. They sought for and got a priest of their own denomination in the person of the Rev. Father Korchinski. The land was allotted to them for the purposes of the Congregation of the Greek Catholic Church.

Your rev. client announces himself as owing allegiance to the Roman Catholic Church. There can be no question, therefore, as to the right of our clients to hold that which they got by their own exertions for the purposes of their own Church.

We do not wish at this time to say more than that if you desire to issue any writ in the matter, we are instructed to accept service, and in closing to say that Father Korchinski, with the sanction of his bishop and with the approval and at the request of the Congregation of Orthodox Greek Catholics at Limestone Lake, performs their duties of priest there.

Yours truly,
(Sgd.) SHORT & CROSS.

No. 58. Exhibit O. Russian document—omitted.

Exhibit O.

Russian document—omitted.

No. 59. Exhibit P. Letter, Petro Stephura to priest, 1st April, 1900.

Exhibit P.

Beaver Creek, April 1, 1900.

Glory to God and Jesus Christ.

Right Reverend Spiritual Father,

We give the Spiritual Father to understand that we have made up the fare for your reverence, $50, and the rest we expect to collect, therefore we inform you that if your reverence could come to Edmonton at your own cost we will come to Edmonton and give you the money back, and if not we will pay for the ticket ourselves. Perhaps your reverence could get a ticket to Edmonton and when your reverence come to Edmonton we shall be there at once, as soon as the Father informs us that he is there in Edmonton. You must send us word to Beaver Creek and we shall be there immediately. We could not send the money to your reverence because we have not yet collected it all, because a heavy snow came. Now it has stopped and we cannot get around yet either with sleds or wagons. We send your reverence the signatures which you have requested. The whole Committee have signed, and besides the Committee, other people and an official of the Government has certified with 16 seals, one seal to almost every signature, and the people, with joy and good will, would have you come as quickly as possible to us before the holy Easter holidays, so that you can consecrate the Easter bread and protect our lost sheep as a pastor of Christ's flock, which lost sheep have not even been at confession for some years ; and we beg your reverence

to give us an early answer as quickly as possible, and we greet you in the hope of seeing you soon.

Written by PETRO STEPHURA,
Beaver Creek,
Star P.O., Kanada.

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Exhibit Q.

No. 60. Exhibit Q. Admission as to Canon of the Mass.

Canon of the Mass

" Te igitur, clementissime Pater, per " Jesum Christum Filium tuum Domi- " num nostrum, supplices rogamus ac " petimus uti accepta Habeas et bene- " dictas haec + dona, haec + " numera, haec + sancta sacrificia " illibata, in primis, quae tibi offer- " imus pro Ecclesia tua Sancta " Catholica : quam pacificare, custo- " dire, adunare, et regere digneris toto " orbe terrarum, una cum famulo tuo " Papa nostra N., et Antistite nostro " N., et omibus orthodoxis, atque " Catholicae et Apostolicae Fidei " cultoribus."

" We, therefore, humbly pray and " beseech Thee, most merciful Father, " through Jesus Christ Thy Son, our " Lord " (he kisses the altar), " that " Thou wouldst vouchsafe to accept " these + gifts, these + presents, " these + holy unspotted sacrifices, " which in the first place, we offer Thee " for Thy Holy Catholic Church, to " which vouchsafe to grant peace ; as " also to protect, unite, and govern it " throughout the world, together with " Thy servant N., our Pope N., our " bishop, as also all Orthodox believers " and professors of the Catholic and " Apostolic Faith."

(Sig.) C. DE W MACDONALD,
For Plffs.

Compared with book (Latin and English) with Mr. Beck, and found correct.
(Sgd.) WM. SHORT.

Exhibit 1.

No. 61. Exhibit 1. Letter, Dominion Lands Agent to Secretary Department of Interior, 25th May, 1898.

Edmonton, 25th May, 1898.

Sir :

With reference to your file 438,627, I beg to enclose herewith what purports to be an assignment from his Lordship Bishop Grandin of L.S. 1. of Section 27, 56, 19, W. 4. M.

It appears to have been an error asking for a patent in his Lordship's name. This land is not intended to go to the Catholic Church, but to the members of the Greek Catholic Little Russian denomination who are settled in this vicinity.

The Trustees for these people are Mikel Polischy, John Pilipivisky, and Mikel Melnyk.

They were very deeply concerned over the fact it was proposed to hand this land over absolutely to the Roman Catholic Church ; they insist on having the entire

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control in their own hands and, as it is highly desirable to meet their wishes in this connection, I should be glad (if the relinquishment which I herewith enclose is inadequate) if you will be so good as to have an instrument prepared to meet the case.

I am, Sir,
Your obedient servant,
A. D. L.

The Secretary,
Department Interior,
Ottawa, Ont.

No. 62. Exhibits 2 and 4. Russian documents—omitted.

Exhibits 2—4.

Russian documents—omitted.

No. 63. Exhibit 5. Translation of letter, Bishop Nicolas to congregation, 8th January, 1897.

Exhibit 5.

W. P. I.
Bishop of Alutzk & Alaska
No. 7.
Jan. 8—20, 1897. Sanfrancisco, N.A.

I.

Good will to you and peace from God the Father and our Lord Jesus Christ.

II.

Replying to your letter, we are thankful to God that though you are in a foreign country, you remember that you are Russians, and have the faith (given) by God. I would fain include you all in this blessed faith, from which Popes and Jesuits seek to separate you by force and falsehood.

III.

Inform me how I am to get you from Seattle, State of Washington, what railways and through what cities.

IV.

I would come to you myself to confess you all, to give Holy Communion, to baptise the children, to perform wedding ceremonies if there are those who wish to be married. I love our nation and would gather them about me, and have them close to my heart like brothers.

V.

That young man who has graduated from the High School—how old is he, is he married or single ? He might be fit to become your priest. Write to me all (these details).

VI.

Tell me also what is your occupation, where and how large your settlement is, how many families there are, and how many single men and girls there are.

VII.

I will send you some good books soon.

VIII.

May God's blessing rest upon you all.

IX.

+ Sincerely,

NICHOLAS,

Bishop of Alutzk and Alaska.

Exhibit 6.

No. 64. Exhibit 6. Translation of letter, Bishop Nicolas to congregation, 5th Feb., 1897.

W.P.I.
Bishop of Alutzk and Alaska
No. 427.

Sanfrancisco, February 5th, 1897.

I.

Peace to all.

II.

Replying to yours, I have much satisfaction in your return to your grandfathers' religion, "pravoslavny." God will bless your good intention. Pray to Him with pure heart, and he will grant you the desire of your hearts.

III.

After Easter I intend to go to Alaska, to Sitka, and farther, and after that I will be in Seattle, where our "Pravoslavny" Church is named after St. Spiridon Trochimoski.

IV.

Then I shall come to you (to perform the ceremony) of cross-kissing; and (I instruct) you to read the books which I sent you, until that time, and get ready a small building made of wood or canvas, and make it clean; in which I may have Holy Mass, baptise the children and give communion to all.

V.

It would be well to have this work done in that place where you intend to erect the church afterwards.

VI.

The priest in Seattle can go to you three or four times a year, perhaps oftener.

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No. 64. Exhibit 6. Translation of letter, Bishop Nicolas to congregation, 5th Feb., 1897 —*continued.*

VII.

As for myself I can stop in a common house just as contentedly as in a palace; for Christ himself and His Apostles dwelt not in palaces; and I (shall be satisfied) to be among good souls and have a crust of bread.

VIII.

I understand that you have a very cold climate, with much snow and frost. After the Easter holidays, however, it will be warmer and clearer.

IX.

Write me how many families there are; how many unmarried men (people ?) want to join the "Pravoslavia," what their names are, how many girls there are, and how long they have been in America—all of which I require to know.

X.

In Pennsylvania there are many of your countrymen united to the "Pravoslavia."

XI.

God bless you all and give you health and blessing to your souls.

XII.

+ In God's mercy,
NICHOLAS,
Bishop of Alutzk & Alaska.

No. 65. Exhibits 7 and 8. Russian documents—omitted.

Exhibits 7—8.

Russian documents—omitted.

Exhibit 9.

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No. 66. Exhibit 9. Requisition for timber permit.

I must know where the Church is to be built, on what quarter section; and this requisition must be signed by the Trustees for the Church or by the Priest in charge.

REQUISITION No. PERMIT No. 26014

(Stamp of Land Office, Edmonton, Dec. 7th, 1897.)

REQUISITION FOR A PERMIT.

for a church

10 We Fedor Melinick, Meickila Melinick and Mike Pullishie of the N.E. 22, N.E. 2, N.W. 22 Section

in township 56 in Range 19 West of the 4th

Meridian

desire to obtain a Permit to cut the following Timber:

(3000) QUANTITY.		KIND.	LENGTH.
4000	ft. Building Logs	Spruce	30 ft.
	Roof Poles		
	Poplar Fence Rails	Church to be built on	
	Cords dry wood	the S.E. 27. 56. 19	

Greek Catholic Church

20

Unoccupied Government Land

on of Section in Township in Range

..... of the Meridian.

n Z

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No. 66. Exhibit 9. Requisition for timber permit —*continued.*

Remarks This timber is required and will be used in the erection of a Church building for the mission of the Greek Orthodox Church, and for no other purpose.

(State whether Catholic or Greek Orthodox.)

Dated Nov 29th 1897

their
Fedor X Melinik
Meickila X Melinik
Mike X Pulishie
mark

(SIGNATURE,)

P. O. ADDRESS Edna

trustee to Priest in Charge The Church

NOTICE.—Enclose 25 cents office fee with this requisition, in addition to the dues, and address to Crown Timber Agent

This permit has been addressed to Fedor Melinik, Edna P. O., Alta

FORM No. 22. (SEE OVER.)

NOTE.—That part of above printed in small pica is printed in original; that part printed in bourgeois is written in black ink, the notes at the top, the remarks (except the words "Greek Orthodox"), the notes, as to the signature by the trustees or priest in charge and as to the disposition of the permit being in one handwriting, the remainder in another; that part printed in red is in blue pencil on original.

No. 67. Reasons for Judgment of Trial Judge, Scott, J., 9th Jan., 1904.

Reasons for Judgment.

At the trial the Plaintiffs abandoned their claim that they were duly elected Trustees of the church in question. What they now claim is a declaration that the church and the lands upon which it is erected are the property of the Greek Catholic Church, and in an injunction restraining the Defendant Father Korchinsky from conducting services in the church according to the faith, rites and ceremonies of the Russian Orthodox Church.

The defence of the lay Defendants is in substance that the Greek Catholic Church is no other than the Russian Orthodox Church, and that the church in question is a Russian Orthodox Church.

It is apparent from the pleadings, as well as from the evidence, that the Church referred to by the Plaintiffs as the Greek Catholic Church is not the same Church as the Russian Orthodox Church. The question as to which of these Churches is entitled to be styled the "Greek Catholic Church" is raised by the pleadings, but I do not consider it necessary to decide it, and my reason for so thinking is that,

if it should be found that the church in question is the property of the Congregation of the Church referred to by the Plaintiffs, they should be entitled to a declaration to that effect, even though it might be found that the Russian Orthodox Church was entitled to that name, although I did not decide that question. I may say that the evidence and the authorities to which I have been in a position to refer lead to the view that the Plaintiffs' Church is as well entitled to be so styled as the Russian Orthodox Church, if not better entitled. The evidence shows that the lay Plaintiffs and Defendants, as well as a large majority, if not all of the members of the Congregation of the church in question, are Galicians, and that when in Galicia they were what is known as "Uniates," or "United Greeks," that is members and adherents of a Church which recognises the supremacy of the Pope and accepts the creeds and doctrines of the Roman Catholic Church but the liturgy and rites of which were those of the Orthodox Greek Church. I will hereafter refer to the former Church as "The Uniate Church" and to the Greek Orthodox Church as the "Orthodox Church."

The differences in doctrine between the two Churches are that the Uniate Church upholds, and the Orthodox Church denies, the following dogmas:—

1. The Infallibility of the Pope.
2. The Immaculate Conception of the Virgin Mary.
3. Purgatory.
4. The procession of the Holy Ghost from both Father and Son.

The head of the Uniate Church in Galicia is the Archbishop of Lemberg, who is subject only to the Pope. The head of the Orthodox Church is the Czar of Russia and under him is what is known as "The Holy Synod."

Some further facts shown by the evidence, which bears upon the questions involved, are as follows:—

The Churches in Galicia recognised by the Austrian Government, which is a Roman Catholic Government, are the Roman Catholic, the Uniate and Armenian.

The Orthodox Church is neither allowed nor tolerated, the reason apparently being that its head is a foreign potentate. The only recognised place of worship for that Church in Galicia is that which is attached to the residence of the Russian consul at Lemberg, for the use of his family and suite. In many villages in Galicia there are both Uniate and Roman Catholic churches, but, if only one of them, the adherents of both are permitted to attend it.

The lands upon which the Uniate churches are erected are held in the name of the Archbishop of Lemberg. There is no bishop of that Church in America. and, such being the case, it is the duty of a priest who comes to America for the purpose of performing priestly duties to report himself to the Roman Catholic bishop of the diocese and obtain his sanction. If Uniates go to a country where there is no hierarchy or bishop of their own Church, they are enjoined to submit themselves to a Roman Catholic bishop, but they must return to their own rite as soon as opportunity occurs. It is the duty of the Roman Catholic bishop to provide them with a priest of their own rite as soon as possible, and in the meantime to provide one of the Latin rite, if desired.

During the winter of 1896-7, some of the Uniates residing near Star and Wostok met together for the purpose of arranging for the erection of a church, and the procuring of the services of a priest. One meeting was held at the house of

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—*continued.*

one Sowka and another at the house of one Halkow. In pursuance of an arrangement made at one of those meetings a letter was written to the Bishop of the Orthodox Church at San Francisco, who is the head of that Church in America. This letter is not given in evidence, but letters from that bishop, apparently in reply thereto, are before me, and I gather from their contents that the letter to him intimated that those on whose behalf it was written were desirous of becoming adherents of the Orthodox Church. There were, however, only five present at the meeting at which this letter was written, viz.: Halkow, Sowka and Fedor Nymyrski and Lakusta, all of whom afterwards became members of the congregation of the Orthodox Church at Wostok.

At a subsequent meeting at which the bishop's letters were read, a larger number were present, among them being a number of those who afterwards became members of the Congregation in question. At that meeting there was a difference of opinion among those present as to where the church should be erected. Those residing near Star wanted it erected there, while those near Wostok wanted it there.

In the spring of 1897 Father Dymytrow, an Uniate priest, came to the Star settlement on a visit and remained there about a week. He was not then accredited by the Roman Catholic bishop, but the latter, finding him there, and having upon inquiry ascertained that he was a duly ordained Uniate priest, gave him authority to act as such. Father Dymytrow thereupon returned to the settlement and held services according to the Uniate rite in the houses of different Uniates and in the school house. In one of his services in the school house, which was attended by all the lay Defendants, Bishop Legal, the Roman Catholic Coadjutor Bishop of the Diocese, was present sitting beside the altar dressed in his canonical robes, and at the close of the service he pronounced his pastoral benediction. During one of his visits that summer Father Dymytrow consecrated the cemetery, which was then established on the land upon which the church in question was afterwards built.

During or shortly after Father Dymytrow's first visit to Father Kamneff, a priest of the Orthodox Church paid a visit to the settlement, having been sent there by the Orthodox Bishop at San Francisco. He was accompanied by Father Alexandroff, who had not then been ordained as a priest. On the Sunday after their arrival they held a service at Nymyrski's, near where the Wostok Orthodox Church was afterwards built. That service was attended by a number of those who afterwards became members of the Congregation of the church in question. At the conclusion of the service, Father Kamneff, through Father Alexandroff as interpreter, addressed those present and stated, among other things, that he or his bishop would assist them in building a church, and that the first church should be built at that place, Wostok. At the service held by Father Dymytrow at the school house at Star, at which Bishop Legal was present, the latter, through Father Dymytrow as interpreter, addressed those present, stating that he would endeavour to procure land for a church and that he would assist them in building it. Later in the same year an entry for the lands upon which the church in question was built appears to have been made in the name of Bishop Grandin, the Roman Catholic Bishop of the Diocese.

In the fall of that year, Defendant Polushie and Melnyk and Fedor Melnyk

applied for and obtained in their own names a licence to cut timber upon Dominion lands for the purpose of building a church. The application made by them states that the timber was required for building a "Greek Orthodox Church." During that fall and in the following winter, a number of the Star Congregation turned out and cut and hauled timber for the church. Father Dymytrow accompanied them when they went to the woods for that purpose.

At Xmas, 1897, a party of ten of the Star Congregation, lead by a Spaczinski, drove around the settlement singing Xmas hymns and collecting money for the church building fund.

Father Dymytrow, having left the settlement during the year 1897, and giving up his charge, Bishop Legal applied to Rome to have a priest, of the Greek rite, sent out. As the result of his application Father Tymkiewicz, a priest of that rite, came out in the spring of 1898, and was placed by Bishop Legal in charge of the Uniates of the Star settlement. He remained about four months, during which he held services regularly in the different houses in the settlement, the church not having been completed in that time. While he was in charge, it was discovered by the members of the Congregation that their church lands had been entered for in the name of the Roman Catholic bishop. At his, Father Tymkiewicz', suggestion, application was made to the priest in charge of the Diocese, Bishop Legal being then in Europe, to have the entry changed, so that the lands might stand in the names of some of the members of the Congregation as Trustees therefor. The lay Defendants were informally selected as such Trustees and, with the consent of the bishop's representative, their names were substituted, and a patent for the lands was afterwards issued to them in trust for the purposes of the Greek Catholic Church at Limestone Lake.

After Father Tymkiewicz left, the Star Congregation was without a pastor for about two years, during which interval Spaczniski, the precentor, held regular services on Sundays and holidays. These services were held in Fedor Melnyk's house near the church, until the church was completed, after which they were held in the church. These services were held according to the Uniate rite. The lay Defendants were more or less regular in their attendance at them.

On the first April, 1900, at a meeting held at the house of one Danczuk, twenty-four of the leading members of the Congregation, including the three lay Defendants, subscribed their names to a letter written at that time to the Plaintiff, Father Zacklynski, requesting him to become their pastor, and stating that they were all Uniates. He arrived at Star about six months later, and having been authorised to do so by Bishop Legal, entered upon his duties as pastor, holding regular services according to the Uniate rite in the church in question, with the approval of the whole Congregation until the 19th December, 1900, when, at a meeting of the Congregation held on that date, dissensions for the first time arose between him and some of the members.

About the 2nd January, 1901, some of the members of the Congregation met at the house of Fedor Melnyk. About seven members were present, including the Plaintiff Melnyk and the three lay Defendants. The Defendant, Father Korchinski, who is a priest of the Orthodox Church, and who for some months prior to that time had been in charge of the Orthodox Greek Church, was also present, he having been requested by Defendant Pylypiw to attend. Those

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present at the meeting, except Plaintiff Melnyk and another, requested Father Korchinski to become the pastor of the church in question. He appears to have explained to them at that time that before he could become their pastor they must renounce the errors of the Roman Catholic Church, but that, if they would do so, and they had the right to the church, he would become their pastor.

On 1st February, 1901, the lay Defendants and three or four other members of the Star Congregation attended a service held by Father Korchinski in the Orthodox Church at Wostok and there publicly renounced the doctrines of the Roman Catholic Church, and were received into the Orthodox Church. On the following day Father Korchinski held a service according to the Orthodox rite in the church in question, another such service therein on 3rd February, and another on the 8th April following. About a week after that, viz., on the Russian Easter, he attended at the church for the purpose of holding another service, but Father Zacklynski being there apparently for the purpose of holding service according to the Uniate rite, a disturbance ensued and a constable of the North Western Mounted Police, who had been requested by Father Korchinski to attend for the purpose of protecting him, refused to allow either party to enter the church. Since that time no services have been held in it.

I cannot avoid the conclusion from the evidence that from the time the erection of the church in question was begun, it was intended to be and is a Uniate Church, and that up to the time Father Korchinski held his first service therein all the services held therein were those of that church, and were held in accordance with the rites and ceremonies.

The lay Defendants contend that even if the services held were those of the Uniate rite, the church was nevertheless built and intended for use as an Orthodox Church. That all those who were active in procuring the land for it and in contributing in work and labour towards its erection, had at the first meeting held by Fathers Kamneff and Alexandroff in the spring of 1897 left the Uniate Church and gone over to the Orthodox Church, and that if the services held in the church in question were those of the Uniate Church, they were not aware that they were such.

The evidence leaves it open to doubt whether there was such a wholesale secession from the Uniate Church at that first service. Father Alexandroff states that he kept a list of those who took communion at that service and that the names of none of the Plaintiffs or Defendants appear in it. He gave the names of those he remembers having taken it and Defendant Melnyk is the only one of them named by him. It is true that some of the witnesses for the defence state that nearly all the Uniates present at the service took communion, and it appears that nearly all the Uniates who were then residing in the neighbourhood attended it, but I am not satisfied that any of those who afterwards became members of the Congregation of the church in question became members of the Orthodox Church at that time. The evidence of the witnesses who so stated is not satisfactory. What they stated was done at that service was not according to the evidence of Father Korchinski sufficient compliance with the rules of the Church respecting admission of membership. It may be that at the time of the meeting in the winter of 1896, at which the letter from the bishop at San Francisco was read, the Uniates present were seriously considering whether they should go over to the Orthodox Church, but

between that time and the first service of Father Kamneff Father Dymytrow had arrived in the settlement, and it is possible that his influence may have prevented their taking that course.

A further fact that may have influenced those living near Star, is that at the meeting at which the bishop's letter was read a dispute arose between the Wostok Uniates and those at Star as to where the church should be built, viz., at Wostok or at Star, and this question appears to have been again discussed at Father Kamneff's first service, and it was then decided by him adversely to the Star people, viz., that the first church should be built at Wostok.

Even if any of the members of the Star Congregation did become members of the Orthodox Church at that time, their subsequent conduct shows that they subsequently returned to their original faith. It is impossible for me to believe that they could have attended the services of Fathers Dymytrow, Tymkiewicz and Zacklynski, extending over a period of four years, and have remained during the whole of that period in ignorance of the fact that their services were those of the Uniate Church and not of the Orthodox Church.

It is shown that Father Alexandroff after his first visit in 1897 returned to the Wostok settlement in each of the years 1898, 1899 and 1900, and held service there on each occasion. None of the lay Defendants, and, so far as appears by the evidence, none of the other members of the Star Congregation attended any of the services, although upon some of the occasions they were without a priest of their own, nor did Father Alexandroff at any time interfere with the affairs of the Star Congregation.

He was at Wostok at the time Father Tymkiewicz was at Star, and although they were at most only seven miles apart, no communication ever took place between them.

Again, if the lay Defendants and those who side with them in this suit believed that the church in question was an Orthodox church, why was it that when they were without a priest they did not apply to the bishop at San Francisco to send them one ? They knew that when he had been applied to before, he had sent one to the Wostok people, yet Defendant Melnyk states that when they were without one after Father Tymkiewicz left, they had applied to Lemberg to have one sent out, and they must have known that no other than an Uniate priest would be sent from there.

Then there is the letter of invitation to Father Zacklynski, in which they state that they were Uniates. It is true that several of those who signed it state that they were not aware of its contents, and that they thought that they were sending for an Orthodox priest. Even although it appears that nearly all those who signed it were illiterate, I doubt whether such was their belief or that they were ignorant of its contents. If they had wanted an Orthodox priest they would have written to the Orthodox bishop for one. Also, it would be hard to believe that the writer of the letter, being an Uniate, was professing to belong to the Orthodox Church, and was deliberately deceiving them as to its contents.

A circumstance relied upon by the Defendants as tending to show that the intention was to build an Orthodox church is the fact that the application for the permit to cut timber for it states that it was for the purposes of the Greek Orthodox Church. That circumstance might have been of some weight were

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it not for the fact that the agent, when sending out the application for signature, left a blank before the word "church," for the insertion of its name, and underneath the blank the following words were written with a pencil, viz. :— "State whether Catholic or Greek Orthodox." It is not improbable that the applicants understood from these words that they must use either one of those names and no other, and that, as their Church was Greek Church, they must use the latter name as being the nearest approach to the name by which their Church was known.

Another circumstance relied upon is, that the members of the Congregation, and Father Dymytrow as well, objected to the lands being held by the Roman Catholic bishop. It was contended that this showed an intention to sever all connection with the Roman Catholic Church; that as the Galicians formerly belonged to the Orthodox Church, and were forced, upon coming under the rule of the Austrian, to accept the Roman Catholic creed and doctrines and acknowledge the supremacy of the Pope, there was always a secret revolt against this state of affairs and a desire to return to their former creed and system of church government, and that upon coming to a free country they would naturally take advantage of the opportunity to do so.

The evidence of the Galician witnesses leads me to conclude that they do not trouble themselves very much over the differences in creed between the two Churches. Many of them do not understand what these differences are. They appear, however, to be strongly attached to their own rite and jealous of any encroachments upon their rights by Roman Catholics of the Latin rite. In Galicia their Church lands are held in the name of their own archbishop, and their objection to the Roman Catholic bishop holding them here was probably founded upon the apprehension that he would thus be in a position to dictate terms to them, which they would not otherwise be compelled to submit to. The fact that Father Dymytrow, himself an Uniate priest, sided with them in their efforts to procure the title in their own names, points to the conclusion that it was not a change of religion or creed that they had in view.

It is claimed by the Defendants that Father Zacklynski in December 1900 voluntarily severed all connection with the Congregation.

It appears that at the meeting on 19th December, 1900, he stated that owing to the non-payment of the stipend promised him he was leaving or would leave them and that he afterwards stated to Defendant Pylypiw, one of those with whom he had quarrelled, that he was no longer their pastor, but it also appears that he afterwards continued to exercise the duties of pastor and that he endeavoured to hold service in the church in question, but was prevented from doing so by the acts of the Defendants. I, therefore, think he is not disentitled to join in this action.

Father Korchinski in his defence states that about February, 1901, he was requested by the Trustees (the lay Defendants) to become the priest of the church in question and that the Congregation appearing to be unanimous or nearly so, he, with the approval of the Congregation, held service in the church according to the rites and ceremonies of the Greek Catholic Church on two occasions, after which certain members of the Congregation expressed their disapproval, whereupon and before the writ was issued, he ceased to hold service therein or to concern himself in the business or affairs of the Congregation.

I find that upon one occasion at least he attempted to hold a service in the church after he became aware that some of the Congregation objected to his doing so. This is shown by the fact that he requested a police constable to attend in order to protect him in his attempt.

In addition to this the Defendants' advocates in their letter of 15th March, 1901, to Plaintiffs' advocates, in reply to their letter threatening proceedings against him, state that he was then performing the duties of priest of the Congregation, and it does not appear that before this action was commenced, any intimation was conveyed to the Plaintiffs that he had desisted or intended to desist.

For the reasons I have stated, I hold that the Plaintiffs are entitled to a declaration that the lands described in the statement of claim and the church erected thereon are the property of that branch of the Greek Church which is united with the Roman Catholic Church, and which may properly be designated as "The United Greek Catholic Church," and that they are not the property of the Russian Orthodox Church, and that Plaintiffs are also entitled to an injunction restraining the Defendant, Father Korchinski, from conducting services in said church, according to the tenets, faith, rites and ceremonies of the Russian Orthodox Church, and from exercising any other acts of ownership or control over said church in the name of, or for the benefit of, the last mentioned Church.

I reserve the question of the costs and will hear further argument upon it. There was a material change at the trial in the form of the Plaintiffs' action, which may affect at least some portion of the costs.

(Sgd.) D. L. Scott.

In the Supreme Court of the North-West Territories Northern Alberta Judicial District.

Between

Reverend Iwan Zacklynski, Pavlo Paskemko and Petro Melnyk, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., or in the alternative as private individuals as priest and members of said Congregation, suing on behalf of themselves and all the other members and adherents of said Congregation *Plaintiffs.*

and

Reverend James Korchinski, Michailo Polushie, Iwan Pylypiw and Michailo Melnyk *Defendants.*

The twenty-fifth day of March, A.D. 1904.

This action having on the 16th, 17th, 19th, 20th, 27th, 28th, 29th days of May, 1902, 15th, 17th, 18th, 21st, 22nd, 23rd, 24th days of October, 1902, 20th, 21st, 22nd, 23rd, 24th, 26th, 27th, 28th, 29th, 30th days of January, 1903, 7th, 8th, 9th, 11th days of April, 1903, 17th, 18th, 20th, 21st days of July, 1903, and the 4th day of September, 1903, been tried before Honourable Mr. Justice Scott

RECORD.

In the Sup. Court of the NWT, NA, Jud. Dist.

No. 68. Formal Judgment of Trial Judge, Scott, J., 25th March, 1904 —*continued.*

at Edmonton without a jury and the said Honourable Mr. Justice Scott having thereafter, to wit, on the 9th day of January, A.D. 1904, filed his judgment in writing, deciding that Plaintiffs are entitled to a declaration that the lands described in the statement of claim and the church erected thereon are the property of that branch of the Greek Church which is united with the Roman Catholic Church and which may properly be designated as "The United Greek Catholic Church," and that they are not the property of the Russian Orthodox Church, and that Plaintiffs are also entitled to an injunction restraining the Defendant Father Korchinski from conducting services in said church according to the tenets, faith, rites and ceremonies of the Russian Orthodox Church, and from exercising any other act of ownership or control over said church in the name of, or for the benefit of, the last mentioned Church.

It is this day adjudged, ordered, declared and decreed :—

(a) That the lands described in the statement of claim, being legal Subdivision 1 of Section 27, Township 56, Range 19, West of the 4th Meridian, and the church erected thereon, are the property of that branch of the Greek Church which is united with the Roman Catholic Church and which may be properly designated as "The United Greek Catholic Church."

(b) That the Defendants, other than Korchinski, shall forthwith upon service of this order deliver up to the Deputy Clerk of this Honourable Court at Edmonton, to be by him held to abide the further order of the Court :—

1. The duplicate certificate of title issued for said above-mentioned lands out of the Land Title Office of the North Alberta Land Registration District on the sixth day of July, A.D. 1899, to them the said Defendants, Michailo Polushie, Iwan Pylypiw and Michailo Melnyk (therein described as Mikel Pulcochy, John Pylypiw and Mikel Melnyk), in trust for the purposes of the Congregation of the Greek Catholic Church at Limestone Lake in said district.

2. The key of the said church.

3. The cash box belonging to the said United Greek Catholic Congregation and the sum of $59.55.

(c) That the Defendant Reverend James Korchinski be and he hereby is, for ever enjoined and restrained from conducting services in said church according to the tenets, faith, rites and ceremonies of the Russian Orthodox Church and from exercising any other acts of ownership or control over said church in the name of and for the benefit of said Russian Orthodox Church.

(d) And that the Plaintiffs, not asking for costs against the Defendant Korchinski, do recover against the other Defendants their costs of the action as if the same had been brought by them as members of the said Congregation only, and not as Trustees, and that the Defendants (other than Korchinskido) recover against the Plaintiffs and be entitled to set off on taxation all costs incurred by them by reason of the Plaintiffs claiming as Trustees, or by reason of the amendment made in the statement of claim at the trial, and especially the costs incurred by them by reason or in consequence of the service of the summons for an injunction herein.

(e) Leave is reserved to the Plaintiffs to move for an order to enter and make

use of the church in question for religious services and for meetings of the Congregation pending the election of Trustees and for any such other relief as may be required to legally vest the said lands and church in Trustee for the said Uniate Greek Catholic Congregation.

Dated the 25th day of March, A.D. 1904.

(Sgd.) MacDonald & Griesbach,
Plaintiffs' Advocates.

Approved,

(Sgd.) Short, Cross, Biggar & Ewing,
For Defendants.

(Sgd.) Alex. Taylor, (L.S.)
Deputy Clerk S. C. N. W. T.,
N. A. J. D.

In the Supreme Court North West Territories, en banc.

No. 69. Notice of Appeal, 18th April, 1904.

In the Supreme Court of the North-West Territories. (En banc.)

Notice of Appeal.

Take notice that the Defendants, other than the Defendant Korchinski, appeal from the judgment of the Honourable Mr. Justice Scott, pronounced herein on the twenty-fifth day of March, A.D. 1904, to this Court en banc at the next sittings at which the appeal can, according to the practice, come on to be heard, or at such subsequent sittings as the appeal may be heard upon the following, among other, grounds :—

1. The said judgment is against law, evidence and the weight of evidence.

2. The learned Trial Judge erred in holding that the Congregation in question was a Uniate Congregation.

3. The learned Trial Judge having found that the Congregation refused to recognise the supremacy of Rome, erred in holding that it was possible for its members to be members of the Uniate Church, or that the Congregation should be a Uniate Congregation.

4. The learned Trial Judge having found that there was no appreciable difference between the rite of the Uniate and of the Orthodox Churches, he should not have found that the fact that the Congregation accepted without objection the ministrations of a priest of the Uniate Church was to be considered a circumstance in favour of the view that the Congregation desired to be members of that Church.

5. The learned Trial Judge erred in considering that under the circumstances the fact of the Congregation accepting the ministration of such priest indicated any approval of the allegiance he gave Rome or any desire to submit themselves to the authority of the Pope.

6. The evidence shows conclusively a strong desire on the part of the Congregation to have nothing whatever to do with the Roman Church, and on the contrary indicates a desire to return to the faith of their ancestors, the Orthodox Church.

RECORD.

In the Supreme Court North West Territories, en banc.

7. The learned Trial Judge erred in holding that any one of the priests who ministered to said Congregation was a Uniate priest

Dated this 18th day of April, A.D. 1904.

SHORT, CROSS, BIGGAR & EWING,
Advocates for the Defendants.

To MESSRS. MACDONALD & GRIESBACH,
Advocates for the Plaintiffs.

No. 70. Reasons for Judgment in Appeal. Sifton, C.J.

Reasons for Judgment in Appeal.

Sifton, C. J. (dissenting) :—

This case affects the title to legal Subdivision 1, Section 27, Township 36, Range 19, West of the Fourth Meridian, N.W.T., and is a contest between two apparently rival religious denominations for the control of a church building erected upon said land. A very large amount of evidence has been taken as to the different creeds and distinguishing peculiarities of the two bodies, most of which, in my view of the case, is irrelevant to the issue. The spasmodic visits to the settlement, and services therein of various priests and the degree of attention paid to their respective services by various members of the Congregation before or after the completion of the church, is apparently relied upon strongly by both parties to the action, much more so than experience in a new country like this would warrant. Settlers in a remote district anywhere in this country, with no settled pastor of their own, will attend occasional religious services and give the most serious attention thereto without in any way believing that they are prejudicing their own religious views, and much more will a settlement of foreigners, knowing no English, attend services conducted in their own language even if not in the identical form to which they have been accustomed. In arriving at a conclusion in this case I have eliminated the clerical Plaintiff and Defendant who disclaim any interest, and have considered simply the documentary evidence filed showing title in the Defendants, how they got it and for what purpose, and whether anything has happened since to change their position. I find that on November 29th, 1897, a permit was issued to two of the Defendants and one other person by the Government to cut logs " for the erection of a church building for the mission of " the Greek Orthodox Church," which logs were by the Defendants and others hauled and used in the erection of the church in question : that about this time the Defendants were elected Trustees of the Congregation and ever afterwards took the active part in looking after the affairs of the church : that previous to the 25th of May, 1898, there had arisen a question as to the title to this land and that in consequence of protest Bishop Grandin had, as shown by letter of that date to the Department of the Interior, relinquished all claim thereto to the Defendants, and on the 6th day of July, 1899, a certificate of title issued for said lands vesting same in the Defendants " in trust for purposes of the Congregation of the Greek " Catholic Church at Limestone Lake," being the Congregation which had elected the Defendants Trustees. No evidence has been adduced to satisfy me that the original Congregation or any considerable portion thereof have ever expressed dissatis-

faction at the action of their Trustees. No Trustees have ever been elected to take their places apparently by adherents of either of the rival denominations under any of the various names claimed for them in the evidence. And I might say that this question of various names appears to cloud the issue herein and may possibly have caused the issue of certificate wrongly in the first instance, as both of the denominations appear to be commonly referred to by laymen as Greek Catholics. With this, however, this action has nothing to do, the sole question being whether the Defendants are entitled to hold this land as against the Plaintiffs, upon whom lies the onus of proof, and I therefore hold that the Plaintiffs have failed to prove their case and that the appeal should be allowed.

Wetmore, J.

Wetmore, J.:

The Defendants' appeal from the judgment of my brother Scott in this case is practically based upon the grounds that the learned Judge erred in his findings of fact, and drew conclusions of fact not warranted by the evidence in some instances, or by the Judge's findings in others. No question of law is raised except possibly one that was advanced by one of the counsel for the Defendants at the hearing of the appeal and which I will refer to later on. The question raised by the case is whether a certain church erected on a parcel of land in what is known as the "Star Settlement," and the said parcel of land, should be held for the use of the adherents of what is known as the "Uniate Church" or as designated by some as the "Greek Catholic Church," or for the use of the adherents of the "Russian Orthodox Church." The parties to the dispute and to the action are Galicians. The Defendants claim that "The Russian Orthodox Church" is entitled to use and is sometimes known by the name of "The Greek Catholic Church." The learned Trial Judge refused to decide that question and I will adopt the same course. It is not necessary to do so for the purposes of this case. It is quite sufficient to distinguish them by the names of "The Uniates" and "The Russian "Orthodox Church," the Plaintiffs are "Uniates," the Defendants are adherents of the "Russian or Orthodox Church." That there are material differences in their creeds and in one respect as to their church government is quite apparent. It is also clear that all the Defendants except Korchinski were at one time Uniates. The evidence is very voluminous and of a very conflicting character. I do not consider it necessary to analyse this testimony. It is sufficient to state that after a careful perusal of it and of the learned Judge's judgment I am of opinion that his findings of fact were warranted by the evidence and I am disposed to think that if I had been in his place my findings would have been of a similar character. But whether they would or not this is not a case where a Court of Appeal should in view of the conflicting character of the testimony and of the conclusions of facts open to be inferred from it interfere with the Trial Judge's findings. It was urged at the hearing of the appeal by Mr. Biggar, of counsel for the Defendants, that the Trial Judge ought to have found, in order to entitle the Plaintiffs to their judgment, that when the land in question was applied for and the construction of the church commenced it was the intention of the people interested to obtain the land and to erect the church on it for the use of the "Uniates."

RECORD.

In the Supreme Court North West Territories, en banc.

No. 70. Reasons for Judgment in Appeal — *continued.*

The learned Judge in the course of his judgment says as follows: "I "cannot avoid the conclusion from the evidence that from the time the erection "of the church in question was begun it was intended to be and is a Uniate church "and up to the time Father Korchinski held his first service therein all the "services held therein were those of that Church and were held in accordance "with its rites and ceremonies."

He then proceeded to state that the evidence "leaves it open to doubt whether "there was such a wholesale secession from the 'Uniate Church' at the first "service held by Fathers Kamneff and Alexandroff (the Russian Orthodox priests) "as contended for on behalf of the Defendants," and he states that "even if any of "the members of the Star Congregation did become members of the Orthodox Church "at that time their subsequent conduct shows that they subsequently returned "to their original faith. It is impossible for me to believe that they could have "attended the services of Fathers Dymytrow, Tymkiewicz and Zacklynski, extend-"ing over a period of four years, and have remained during the whole of that "period in ignorance of the fact that their services were those of the Uniate Church "and not of the Orthodox Church."

Then he proceeds to point out that in addition to this that while for a considerable period the Star Congregation was without a priest of their own and although Father Alexandroff had returned to the Wostok settlement a short distance away and held services there, "none of the lay Defendants and so far as appears "by the evidence none of the other members of the Star Congregation attended "any of his services." Since I have held that the Trial Judge's findings were warranted by the evidence I add to these findings the further facts that were clearly established by the evidence. That the Congregation proceeded to cut the logs to build the church accompanied by Father Dymytrow, a Uniate priest, in charge at the time. That the cemetery part of the land in question was consecrated by that priest, that the church itself was consecrated by Father Zacklynski, another Uniate priest, and that the letter of first of April, 1900, to Father Zacklynski (Exhibit E), inviting him to come and take charge of the Congregation and signed by all the lay Defendants stated "we are all Uniates near together on Ranges 20, "19, 18, 17 and 16, in Townships 57, 56, 55, 54 and 53," and in view of the testimony bearing directly on the question, I have very little difficulty in inferring and bring my mind to the conclusion that in applying for the land in question and erecting the church upon it the intention was to obtain the land and to erect the church for the use of the Uniate Congregation.

In my opinion this appeal should be dismissed with costs.

In the Supreme Court North West Territories, en banc.

No. 71. Formal Judgment n Appeal, 18th Jan., 1905.

Formal Judgment in Appeal.

Wednesday the eighteenth day of January, A.D. 1905.

This appeal having come on to be heard by the Supreme Court sitting en banc at the city of Calgary in the said Territories on Thursday, the fourteenth day of July, A.D. 1904, and the said Court having heard counsel for the Appellants as well as for the Respondents, having reserved judgment, and the said appeal having this day come up for judgment and it being ordered that the said appeal be dismissed with costs.

It is therefore this day adjudged accordingly.

By the Court,

(Signed) DIXIE WATSON,
Registrar.

Certified:

(Signed) DIXIE WATSON,
[L. S.] Registrar.

In the Supreme Court of Canada.

No. 72. Factum of Appellants, 9th July, 1904.

In the Supreme Court of Canada.

Between

Reverend Iwan Zacklynski, Pavlo Pasemko and Petro Melynk, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as individuals as priest and members of the said Congregation, suing on behalf of themselves and all the other members and adherents of said Congregation. (Amended by leave granted March 11th, 1902.) *Plaintiffs.*

and

Rev. Iwan Korchinski, Michailo Polushie and Michailo Melnyk *Defendants.*

Appellants' Factum.

[Note.—*The references to evidence, &c., have been altered to correspond with the paging of this Record.*]

This is an appeal by the lay Defendants from the judgment of the Supreme Court of the North-West Territories, en banc, affirming the judgment of the Hon. Mr. Justice Scott, in favour of the Plaintiffs (Respondents), to which all citations of page and line refer.

The subject matter of the dispute is forty acres of land near Star, Alberta, with the church erected thereon. The land was a Government free grant to the Defendant Trustees, " in trust for the purposes of the Congregation of the ' Greek "' Catholic Church,' &c." See Exhibit K, p. 162. The church is built of logs, a Government free permit being obtained for logs to be used in the erection of a " Greek Orthodox Church and for no other purpose." See Exhibit 9, pp. 169–170.

RECORD.

In the Supreme Court of Canada.

No. 72. Factum of Appellants, 9th July, 1904 —*continued.*

The members of the Congregation are Galicians, or Little Russians, as they are sometimes called.

The contest is one between different religious denominations; on the one hand the Uniates, on the other the Orthodox Greek Church. There is no writing formally setting forth the denomination of the Congregation, and it therefore remains to ascertain the denomination by the usages of the Congregation.

Att.-Gen. vs. Murdoch, 1 DeG. M. & G. 86. Affirming 7 Hare 445, 19 L. J. Ch. 3.

Drummond vs. Att.-Gen., 2 H. L. Cas. 837.

Shore vs. Wilson, 9 Cl. & F. 355, 11 Sim. 592.

Att.-Gen. vs. Wilson, 16 Sim. 210.

Att.-Gen. vs. Christie, 13 Grant Ch. 495.

The test of denominational identity is the recognition of a common form of church government and discipline, e.g., a body while still professing the same doctrine and using the same form of worship as a certain denomination, but adopting a different form of government and discipline, were held to have ceased to belong to that denomination by reason of such adoption.

Brown vs. Summers, 10 L. J. Ch. 71.

And the Defendants rely on the fact that the Congregation in question not only refused to adopt, but wholly repudiated the form of church government and discipline of the Uniate Church, to which the Plaintiffs belong and to which they profess allegiance.

The Uniate Church is a branch of the Roman Catholic Church, originating (so far as this action is concerned) in Galicia, Austria, and is subject to the jurisdiction and control of the Roman Catholic Church. See paragraphs four and five of reply, page 7.

Plaintiff Zacklynski (p. 148, l. 30) says: "The head of my Church is the "Pope of Rome."

The Plaintiff Pasemko (p. 149, l. 16) says: "The Pope of Rome is the head "of my Church," and at l. 29, "I know that my Church is subject to the "Pope of Rome."

The Plaintiff Melnyk says (p. 149, l. 38): "I belong to Rome," and at p. 39, ll. 34, 35, "The Pope of Rome is the head of my Church. I was not opposed to "the French (Roman Catholic) bishop holding the land."

Father Zoldac, a Uniate priest and a Witness for Plaintiffs (at p. 11, l. 46; p. 12, l. 1) says: "The government and discipline of my Church is the same as the "Roman Catholic Church." And at p. 10, l. 4, "The Ruthenians (Uniates) in "Galicia are Roman Catholics. They belong to the Roman Catholic Church." At p. 10, ll. 44–45, "I came to this country by an order from the Pope." At p. 11, l. 2, „ My duty was to report to the Roman Catholic Bishop the first place "I came to." x x x l. 4, "Upon arriving here I reported myself to Bishop Legal."

Father Philas, a Uniate priest, and Witness for Plaintiffs, says at p. 46, l. 27, "Roman Catholics and Greek Catholics (Uniates) look upon each other as "brothers." At l. 33, "When I am at Edmonton I reside at the Roman Catholic "Mission." P. 47, l. 6, "Secular priests are under his control (that is the Roman "Catholic bishop here)."

The Right Reverend Emile J. Legal, Roman Catholic Bishop of Pogla and

Coadjutor Bishop of St. Albert, says at p. 15, l. 10, "The Greek Catholic Church "of Galicia (the Uniate Church) is a portion of the Roman Catholic Church." At p. 15, l. 21, "This Church is governed by an hierarchy, which is under the "Pope of Rome." And at ll. 26, 27 and 28, "If Greek Catholics go to a place "where there is no hierarchy or bishop of their own rite, they are enjoined to "submit themselves to the Roman Catholic hierarchy there."

The difference at the present time between the Uniate and Orthodox Churches is set forth on page 154 of the Appeal Book. The former affirms, and the latter denies, the following Roman Catholic dogmas:

(1) The Infallibility and Supremacy of the Pope.
(2) The Immaculate Conception of Virgin Mary.
(3) Purgatory.
(4) The double procession of the Holy Ghost.

Father Alexandroff, a Greek priest, who gave evidence on behalf of the Defendants concerning these differences in doctrines, says at p. 94, l. 43, "To them these doctrines exist only theoretically and the only consideration "they have is that for the supremacy of the Pope, which they (the Galicians) "very strongly object to."

The Defendant Korchinski, at p. 55, of these Galicians says, ll. 23, 24: "Because they are only, as far as I understand, nominally Uniates, but they "really feel at heart Orthodox, as I understand." And speaking of these Defendants at p. 52, ll. 30 to 32, "They stated that they had built the church "for themselves, that they made it a condition that they never would give "that church in the hands of the French Roman Catholic bishop."

The learned Trial Judge, p. 176, third paragraph, finds: "The evidence "of the Galician Witnesses leads me to conclude that they do not trouble themselves very much over the differences in creed between the two Churches. "Many of them do not understand what these differences are."

Neither does the Roman Catholic Church concern itself much over the differences in creed, &c., for it was admitted "that the Roman Catholic Church "recognises the validity of the orders of the Greek Orthodox Church. That is, "that their bishops, priests and deacons are validly ordained and in the event "of their submission to the authority of the Pope they are received into the "Roman Catholic Church without re-ordination." P. 19, ll. 1 to 5.

And in order that a Uniate may be received into the Orthodox Communion all that is necessary is that he renounce the Pope and his errors, i.e., the four doctrines above mentioned.

Korchinski, p. 53, ll. 10, 11 and 12.

And there is little or no difference between the services of the Orthodox and Uniate Churches.

Zoldac, p. 11, ll. 19, 20, 21, says, "Their liturgy and ritual differs but little "from that of the Greek Catholic Church. Both use the same language in the "ritual, viz., the old Slavonic."

Philas, p. 46, ll. 37–44, "Apart from differences in creed the difference in "service between that Church and mine is that in the former they use bells." (But Father Alexandroff says, p. 94, ll. 9 and 10, "In our service we use a bell when "using St. Gregory's liturgy in Lent.")

RECORD.

In the Supreme Court of Canada.

No. 72.
Factum of Appellants, 9th July, 1904
—*continued.*

Pylypiw, p. 106, ll. 31–33, says, "I saw no difference between the services "of Father Kamneff and Father Alexandroff and those I was accustomed to in "Galicia. x x x The services in the churches I attended in Bukowina were "in Russian the same as my own Church in Galicia." (The Bukowinians are admittedly Orthodox. Philas,* p. 10, l. 28–29.)

Plaintiff Melnyk, p. 41, ll. 18–22: "I never heard a service of that Church "(Orthodox) except one by Father Alexandroff and Father Kamneff and another "by Father Korchinski. I cannot tell it from my own religion, except that Father "Korchinski swears them in and that in our country one is called Austrian and the "other Russian."

Korchinski, p. 58, ll. 22–27: "The book I produce (a Uniate ritual), which is "published in 1847, is identically the same ritual as is used in my Church, except "the order of the prayers may not have been the same and that the words 'and "from the Son' in the Creed are contained in it. The book I produce (also Uniate), "which was published in 1893, contains new doctrines, one of which is that of the "immaculate conception, according to (and also) the doctrine of the Filioque."

If therefore there was so little difference between the services of the Uniate and Orthodox Churches and if these people did not concern themselves about the differences in creed, except as to the supremacy of the Pope, we have here the final test as in Brown vs. Summers. From the evidence it will be seen that the repudiation of the supremacy of Rome is the one outstanding feature in the history of the Congregation. For the better understanding of the situation the following summary may be of use:—

These Galicians began to come in 1892. Pylypiw, p. 100, l. 27.

In the winter of 1897 meetings at Halkow's and Salkow's to organise a congregation determined to return to the Orthodox Church, wrote to the Orthodox Bishop Nikola at San Francisco for a priest. From 18 to 30 families then there.

April, 1897. Father Dymytrow, a Little Russian priest, visited them for a week, held two or three services and left.

June, 1897. Fathers Kamneff and Alexandroff sent by the Orthodox Bishop Nikola, came, held services, administered sacrament, received to the allegiance of the Orthodox some 60 families, to which extent the colony was now augmented, and set about organising congregations, getting land, permits for logs, &c., the Orthodox congregation of Wostok and this one being direct results of their visit.

September, 1897, Father Dymytrow returned for a two weeks' visit, consecrated a cemetery upon the land meanwhile secured by this Congregation, and was met at a service by his Lordship, Bishop Legal, who sought to retain the Congregation as Uniates, promising them assistance, &c., and thereafter without the Congregation's knowledge, securing the land in question in his own name.

November, 1897, Defendants obtained a permit to cut logs for the church building, to be used in the erection of "a Greek Orthodox Church."

April, 1899, Father Tymkiewicz came and in May assisted the Congregation to recover the title to their land taken by Bishop Legal; ministered until August and left, for lack of support, though offered support by Bishop Legal if he would stay.

August, 1898, to July, 1900, Congregation was without the services of a priest.

April, 1900, meeting conjointly with Wostok congregation to get a priest.

July, 1900, Father Zachlynski came.

* *Sic.* Qy. Zoldak.

December, 1900, quarrel in Congregation because Father Zachlynski wanted to borrow $300 from the Roman Catholic bishop.

February, 1901, Plaintiffs procured so-called appointment as Trustees.

April, 1901, action begun.

July, 1901, Plaintiff Zachlynski left the Territories. Next heard of as missionary for the Presbyterian Church in Manitoba. Pp. 147–148.

March, 1900, at trial Plaintiffs abandon claim of Trustees.

Of the charter members of the Congregation there were examined on behalf of the Defendants the three lay Defendants, Polushie, p. 97, Pylypiw, pp. 100, 102, Melnyk, p. 129, Fedor Melnyk, pp. 85, 88, Wasyl Feniak, p. 77, Wasyl Polushie, p. 111, Iwan Lakusta, p. 115, Iwan Halkow, p. 122, Iwan Sachmann, p. 110.

For the Plaintiffs Petro Melnyk was the only Witness examined who was present at the initial meetings to organise, but the Witness Spachinski came shortly after these other two meetings. The Plaintiff Pasemko did not come to the country until 1899 (p. 49), and the Witness Iwan Melynk came in the year 1898 (p. 32).

Initial Meetings.

Feniak, p. 77, ll. 8 to 19, "We held a meeting at Iwan Halkow's place "x x x and others, naming them, embracing both sides, were present at the "meeting. They all afterwards worshipped in the church in question. At "the meeting we concluded to write to the bishop in the States for a priest. Anton "Sowka said they knew where to write to him and that he was an Orthodox "Russian bishop like ourselves."

F. Melnyk, p. 85, ll. 42–3; p. 86, ll. 1–3, "Before they came we had a few "gatherings and talked the matter over. x x x It was understood among us "that we were to build a Russian Orthodox Church."

M. Polushie, p. 97, ll. 29–31. "The first time we took active steps to "organise a congregation was at a meeting at Halkow's, which we held before "any priest came to our part of the country."

Pylypiw, p. 100, ll. 37–41. "Before Father Dymytrow first came we "had a meeting at Halkow's about building a church, I and Wasyl Feniak, "the Defendants Melnyk and Polushie, Nikola Melnyk, Petro Melnyk, Techkowski "and others. x x x Anton Sowka, who was present, said that he would write "somewhere to the States and get us a priest of the Greek Catholic Orthodox "Church." P. 108, l. 20.

Sachmann, p. 110, ll. 7 to 14. "I was at a meeting at Halkow's, which was "held before that of which we decided to build a church. The church we decided "to build was 'The Greek-Catholic Prevoslavani (Orthodox).'" Here follows list of those present.

Wasyl Pulishie, p. 111, l. 35, to p. 112, l, 12: "The meeting at Halkow's "about organising was in the winter, a few months before Father Dymytrow "came. x x x The chief talker at the meeting was Anton Sowka. He "told us that we were now in a free country, and we could have whatever Church "we liked. We decided to have a Church that had nothing to do with Rome. "We talked about getting a priest," &c. At p. 114, l. 23: "At the first meeting

" at Halkow's they decided to build a Greek-Catholic Orthodox Church. I am " certain that the word Pravoslavni (Orthodox) was mentioned there."

Lakusta, p. 115, l. 33, to p. 116, l. 9: " *Q.* Give the name of any of the Star " Congregation (there) at the meeting. *A.* They were all there. *A.* There were " nearly 30 families (Galician) at Star and Wostok at that time. *Q.* You say the " letter from the bishop was read ? *A.* Anton Sowka read it and everyone heard " it. *Q.* What did you do ? *A.* We came to the conclusion that we were going " to build an Orthodox Church. *Q.* Why did you decide to do that ? *A.* We " decided to do that business because we wanted to get away from the Polocks " because in the old country we were under the yoke of the Polocks and under " the Pope of Rome. *Q.* And you say you wanted to get away from the Polocks " and the Pope of Rome ? *A.* Yes. *Q.* What have you to do with the Pope " of Rome ? *A.* We had to pay a big tax to the Pope and we were trying to get " away from him." See also p. 116, l. 17. " Did you do anything else ? " *A.* We said we should get a priest. *Q.* Did you decide where to look for a " priest ? *A.* We asked the bishop to give us a priest." L. 30. " *Q.* Did anything " come of all this ? We decided then to select Trustees. x x x *Q.* Did you " hear anything further from the bishop ? *A.* Yes, he said there were " priests coming." *Q.* " Did they come ? *A.* Afterwards the priests came. " x x x Orthodox priests came, Father Kamneff and Father Alexandroff."

Halkow, p. 122, l. 32. Also pp. 123, 124 and 125.

Mike Melnyk, p. 129, ll. 13 et seq., p. 130.

The nature of their deliberations at these meetings are well evidenced by Exhibits 5 and 6, pp. 166–168.

Father Dymytrow's Visit.

Neither the Plaintiff Melnyk or Spachinski speak much of him. The Witness Feniak, at p. 79, says, " Father Dymytrow consecrated the cemetery. I did not " object because we thought that he and Father Alexandroff belonged to the same " Church." P. 80, l. 30, " Shortly after consecrating the cemetery we started " out for the woods to get logs. Father Dymytrow went to the woods with us but " took a gun and went hunting. We started to build our church under the direction " of Father Alexandroff. When we started to get logs for the church we thought " that he and Father Dymytrow belonged to the same Church and that they " were both Orthodox and would not for worlds have anything to do with the Pope " of Rome." At p. 81, l. 12. " The cemetery which Father Dymytrow consecrated " was on the 40 acres. We selected the 40 acres before the consecration of the " cemetery. It was not consecrated before Father Alexandroff came. It was not " consecrated until Father Dymytrow's second visit in the fall. I do not know " how it was that Father Dymytrow came. We never wrote for him. I had " not heard before his arrival that he was coming. x x x He told us that " he was a Russian Greek-Catholic Orthodox priest."

Fedor Melnyk, p. 86, l. 13, says of him, " Father Dymytrow at a service " held by him in the school house told the people what kind of a yoke they had " been under but that they had come to a free country, that they were under a " Polish yoke. When he said this the people all cried. He said that he did not " know anything of the French bishops here."

Pylypiw, p. 101, ll. 1 to 3, says of him, "When Father Dymytrow came "we spoke about building a church. He suggested that we should have a church "but he also told us that we were then too poor to build one. He remained "only one week."

Spachinski, p. 27, ll. 15–20, "Father Dymytrow on the first occasion was with "us for one week and on a subsequent occasion for two weeks. It was on his "second visit, which took place in the following September, that he helped to "get out logs for the church. He held service three times on the second visit "x x x in the school house. I did not see him helping to get out logs."

In June, 1897, Fathers Kamneff and Alexandroff, the expected Orthodox priests, came as per Exhibits 5 and 6, and all the people renounced Rome, joined the Orthodox Church and petitioned for an Orthodox priest.

Fathers Kamneff and Alexandroff.

Lakusta, p. 117, ll. 1–11, says of them, "The priests asked us if we wanted to "be Orthodox and we said yes. He asked us all and we all said yes. x x x "He said kneel down on your knees. He spoke to us and we had to kneel down, "hold up our right hand with two fingers extended (this is the Greek sign of the "cross) and repeat his words. x x x We had to swear that we renounced "the Pope of Rome, that we wanted to belong to the Orthodox Church. We "said, 'Yes, we all wanted to belong to the Orthodox Church.' *Q.* Who was the "first to go forward in that way? *A.* Spachinski stepped forward first and kissed "the priest's hands and feet and fell on his knees and said, 'I am the first "'Orthodox.'"

Halkow, p. 126, ll. 8–10, "After the services we all knelt down and swore "to renounce the Pope. Every single one there knelt down and swore to renounce "the Pope with right hand up and two fingers extended."

At p. 126, ll. 13–14, he says, "I was Orthodox born. I was Orthodox but we had "to be under Rome in Galicia." Again, "Spachinski asked for a book and the "priest gave him a book and he said, 'I am an Orthodox believer (that is a true "'Orthodox) and I will take all the names down of these people,' and he marked "down the names." Ll. 18–21.

Mike Melnyk says, p. 130, ll. 11–22, "After the service was over the priest "asked them which ones wanted to go over to the Orthodox Church. We had to "kneel down and lift up our two fingers extended and had to kiss the cross, and "then he put holy water on us. We renounced the Pope and kissed the cross. "We swore to renounce the Pope. x x x Spachinski went to the priest and "said, 'I will be the first Russian Orthodox man,' and he received a book and "little crosses and pictures to give around to the children. x x x He said "he would go and take down the names of those who wished to go over to the "Orthodox Church—then he (the priest) christened children. After I received "sacrament I went home."

(It may be noted that the Reverend Father Alexandroff, p. 94, ll. 11–14, says, "In receiving into our Church those who are partaking of the Uniate Church "we called upon them to renounce the Pope and his errors, to acknowledge "allegiance to our Church.")

Feniak, speaking of this service, says, p. 77, ll. 29–40, "The two precentors

" for the service were Nikola Spaczinski and Hawrelenke. The priests told us that " they were Ruski priests. After the service was over Father Alexandroff gave " Spaczinski a book and a little cross. There were a lot who took communion at " that service, but I cannot remember who they were. The Defendant Melnyk " was one. I remember Iwan Danczuk was another. After Spaczinski received " the book he told Father Alexandroff that we needed a priest, to which Father " Alexandroff replied, ' You will take down the names showing how many people " ' you have here and send it down to the bishop and I will use my influence to " ' get you a priest.' Spaczinski wrote out a list of names that day after the " service. He went around among the people present and got the names. I " saw him travelling around after that day to get the names of those who were " not present at the service."

Fedor Melnyk, speaking of these services, says, p. 86, ll. 17–34, p. 86, ll. 35–38, " I think that Father Alexandroff came on St. Peter's Day, which is in " June. He held a service which I attended. All the Rusyny in that part of the " country, and some Roman Catholics, attended the services which he held near " Nymyrski's place. Spaczinski sang at that service. At that service we all " signed a piece of paper. There was something written on it by Father Alex- " androff. We talked about building a church and about getting land to build " it on and about the logs. The lay Defendants, Nikola Melnyk, Petro Melnyk " (Plaintiff), Wasyl Feniak, Dembrowski, Kinasz, Tymyak, Spaczinski and others " were talking over these matters together at that service. Some of those present " wanted to build at Nymyrski's place. Father Alexandroff said, ' Build it " ' wherever you like.' We came to a conclusion. Father Alexandroff wrote " something on a piece of paper and we signed it. He gave Spaczinski a prayer- " book and a cross. We collected some money to make entry for the land. We " collected it at Halkow's before Father Alexandroff came. After Father Alex- " androff went away we went to the Land Office about the land and we got the " forty acres. We began to build in the spring of the year Father Tymkiewicz " arrived (1898). I don't remember what year he came, but it was the year " after Father Alexandroff's first visit. We got a permit for logs to build a church. " The walls were breast high when Father Tymkiewicz came. We were building " an Orthodox Church because he told us that he was Orthodox and because at " Father Alexandroff's service at Nymyrski's we had agreed to build a church of " that faith."

Polushie, speaking on the point, says, at p. 97, l. 42, to p. 98, l. 1, " He " (Father Alexandroff) told us that we were Greek-Catholic Orthodox and then " Spaczinski wrote down the names of sixty families. He told us that we should " take steps to build a church."

Pylypiw, speaking of this visit, says, p. 101, l. 16, " I remember Fathers " Kamneff and Alexandroff coming to the settlement. I think they came about " two months after Father Dymytrow left. I attended one of their services at " Nymyrski's. There were a lot there. All the Galicians were there except " those who did not know of the services or were sick. A number confessed at " that service. I did not count them. The service lasted two or three and a half " hours. After the services the priests sat at a table and the people crowded " around them asking them what they should do about the church. They advised

" us to take out C. P. R. land for a site and the Government would arrange an " exchange. They also told us that the Government would give us the logs for " the church. We disagreed at that meeting about a location. The people living " near Nymyrski's wanted the church built there, while we wanted it at Star. " Father Alexandroff then said : ' If you cannot agree, you can build two churches, " ' and later on perhaps three.' We then decided that we would build our church " at Star and let the people at Nymyrski's build their own there. At every " meeting we had we decided that our church was to be Greek-Catholic Orthodox. " A few days after that service we met together and decided to build a church at " the place where the church in question now is. We then wrote the names of about " thirty-six families and sent it to the Government. We were assured we would " get the land we applied for and we proceeded to fence it for a cemetery. We " then held a meeting to decide upon getting logs out. We got a permit."

Mike Melnyk, pp. 129–131, which see.

Spaczinski, who is Plaintiffs' chief lay Witness, speaking on this point at p. 29, l. 46, to p. 30, l. 3, admits, " Father Alexandroff wanted me to go around with a " petition among the people to build a church for him, but I did not want to go. " The lay Defendants and Fedor Melnyk asked me to go around with it. They " offered to pay me to go and write down all the families and get their names. I " went and got the names because they paid me." At p. 31, l. 24, he says, " The " paper I carried around with me when I went to get the names of the families at " the request of the lay Defendants was written out by me. There were about " sixty names on the paper."

At p. 29, l. 31, he says, " I don't know exactly how many Galician families " were there when I first arrived there, but I think about thirty or forty families. " They were scattered. About thirty more families arrived at the time I did." (Lakusta, p. 115, l. 40, speaking of the first meeting, says that there were nearly thirty families of Galicians at Star and Wostok at that time. Feniak, p. 77, l. 7, says, " We counted on eighteen families of Galicians," so that probably Spaczinski got every head of family in the settlement.)

Father Alexandroff, speaking of the occasion, says, pp. 92 and 93, " When " we reached Limestone Lake we were well received. We held services, the first one " at Nymyrski's place. After the services a great many approached us and " expressed themselves as glad we came. A number told us long, pathetic stories " of their sufferings in the old country. They told us of persecution by the Govern- " ment in Galicia and Austria generally, in which persecution the Polocks had " been the chief instruments. Among those who spoke to us of those persecutions " were Spaczinski, Hawrelenko, the Nymyrskis, Michael Melnyk and a great many " others. Their general complaint was of oppression in the old country and they " appeared glad they were now in a free country. They also told us that they had " written for us, that we were their brothers and that they were glad we had " come—that they were free here and could practise their religion here free from " Rome. Spaczinski made this last statement. I told them that they were free " and could practise their religion here independent of Rome. I told them that " the Government was liberal and that they could practise their religion as they " desired. That I heard that the Government would let them cut timber for a " church. After that we tried to select the site for the first church and for the

" mission headquarters. Father Kamneff and I wanted them to select a site " adjoining Nymyrski's farm as a central site. We and some of the people decided " upon that site. Some of the people from the neighbourhood of Star said that " it would be too far for them. We told them there should be no dispute among " them. That they could take other lands the most convenient to them and " build other churches and that when our missionaries would come they would take " care of all of them. Goodwill seemed to prevail at that time and every one " appeared satisfied. We suggested that they should make a schedule of names " of those who liked us and wanted to be our followers. Before this we explained " clearly to them who we were, namely—that we were missionaries of the Greek " Catholic Church, or in this instance of the Russian Greek-Catholic Orthodox " Church. That we were Russians and according to history, were brothers and " that in our veins ran the same Russian blood. We announced that if any one " did not understand anything about us they should ask us. The matter of the " schedule was readily taken up by Spaczinski. I saw a great many names on " the paper. I told Spaczinski to keep it up and when the names of all those who " desired to follow us were obtained he should deliver it to us. He stepped forward " and asked me if I would give him a book for services, as they were anxious to " pray to God. That they had no book of daily service. I gave him one. He " looked at it and said that in his country they had in their churches church books " brought from Kiev and Pochiev. He told me that he knew a great deal about " these places as being remarkable for Russian buildings. He also said that he " had talked a great deal to his people about these places, their monasteries and " churches. We held services every day we were in that part of the country, not " only at Nymyrski's but at other places," &c. " On one of our visits, either " our first or our second, we held services at Iwan Danczuk's house and blessed " the house. "

Feniak and Pylypiw speak to the form of renunciation at p. 140 and Fedor Melnyk at p. 141.

W. Polushie, p. 114, l. 44, says, " We got some logs for the church before the " cemetery was consecrated, that is, we got the promise of some from Belcher and " Sachman." See also p. 112, ll. 18–22.

Permit for logs.

See Exhibit 9, pp. 169–170, " This timber is required and will be used in the " erection of a church building for the mission of the Greek-Orthodox Church and " for no other purpose."

The evidence of K. A. Morrison on the point is given at p. 153. He says, " I am the subscribing Witness to the execution of x x x Exhibit 9 " x x x The parties executing it told me they could not write and I therefore " appended their names. They put their hands on the pen while I made the cross on " each name. They always came to me whenever they had any writing to do and " asked me to do it for them. They brought this paper to me and told me to write " out the application for them." " William (Wasyl) Pulishie acted as their inter- " preter and I filled it out as they told me they wanted it. I asked him what the " name of the church was and he told me it was the Greek-Orthodox Church. I

" never had any interest in that church. I am satisfied that Polushie gave me the " name of the church. I did not know the name myself."

Wasyl Polushie says at p. 112, l. 20, " We got a permit from the Government " for the logs. We held a meeting at which it was decided to apply for one. The " meeting was at Fedor Melnyk's. x x x We had a letter from the Land Office " about it. The Defendant Melnyk and Fedor Melnyk and either my father or " Iwan Pylypiw went to Mr. McGall, who lived near there, to get the letter read " over and answered. I went with them. Mr. Belcher was there at the time and " he read the letter and explained it to them. He then asked us what kind of a " church we wanted the logs for. I was present on that occasion as interpreter " for the Trustees. x x x When he asked me what kind of a church they wanted " before I asked the Trustees and they told me to tell him that it was the same " kind of a church that Father Alexandroff and Kamneff belonged to. x x x " The Trustees were asked to sign the document and they did sign it. We started " to get out the logs shortly after Father Alexandroff came the first time and were " working at it when Father Dymytrow came the second time."

Fedor Melnyk, p. 86, ll. 33–34, " We got a permit for the logs to build the " church."

Michael Polushie, p. 98, ll. 8–9, " We got a permit for timber and built the " church of logs. Fedor Melnyk, my son Wasyl and I got the permit." Mike Melnyk says, p. 131, ll. 9–24. " *Q.* Where did you get the logs ? *A.* We took a " permit." L. 14, " *Q.* Who got that permit ? *A.* Myself, my brother Fedor and " Mike Polushie." L. 19, " *Q.* When you asked for a permit who wrote that " permit ? *A.* Kenny Morrison wrote it out at McGall's. Harry Belcher signed " as Witness. *Q.* Did they ask you what church you wanted it for ? *A.* Yes, we " told them we wanted the permit to build an Orthodox church. *Q.* Did you get " a permit ? *A.* Yes. *Q.* Did you get the logs ? *A.* Yes."

The application for permit is dated November 29th, 1897.

Getting Title for Land from Bishop Legal.

In the following spring the Congregation learned that the Bishop of St. Albert had secured the land in question in his own name. The Plaintiffs' Witness Spaczinski, at p. 28, ll. 9–14, admits " The Congregation as such became unfriendly to " Bishop Legal because he tried to take away the church land from them and " have it in his name. When he promised to get the land for them we did not know " in whose name it would be held. We expected he would take it for us and not " in his own name. We were surprised when we found he had taken it in his own " name."

The Plaintiff Melnyk, at p. 41, ll. 38–40, says, " Father Tymkiswicz, who " arrived in April, 1898, advised us that the land should be held in our own name " instead of in the name of the bishop." The Defendant Melnyk on the point said, p. 132, l. 22, " *Q.* Who got the land for your church first ? *A.* Wasyl " Polushie went several times to the Governor for the land. *Q.* That means " Frank Oliver (M.P.) ? *A.* Yes." P. 132, l. 30, " *Q.* Did the French bishop " get the land where you built the church in his name first ? *A.* Yes. *Q.* Was " anything done about that by the Congregation ? *A.* We went and hired " Philip Wagner for interpreter. The bishop told us then when we went up

"there that all through the States and all through Canada we had to belong "under the bishop. *Q.* Did you see the bishop? *A.* It was not the bishop, "it was the bishop's representative, who told us that we must be under the "bishop. *Q.* Well, what happened? *A.* We went once and he would not give "it back. We went the second time and hired Litke the interpreter; then this "old priest there telephoned to St. Albert to the bishop for him to come up here. "He said, 'The tail cannot wag the cat; the head must be there to wag the tail.' "We said to him, 'You are not our head and we are not your tail.' *Q.* Well, "what happened? *A.* Then we said if he would not give the land back we "would go to a lawyer. The priest said, 'If you don't leave that land where "'it is I won't give you one nail.' We said, 'We don't want any nails, you can "'keep them. We want our land.' He then gave us back our land and we started "to build a church. Then the church belonged only to the Trustees and not to "any bishop or to Rome."

Reverting to the second visit of Father Dymytrow in the previous September, and to the service when his Lordship, Bishop Legal, attended, we find Bishop Legal, p. 16, l. 39, says: "I was appointed bishop in June, 1897 x x x at "one of the meetings I attended out there. Father Nestor Dymytrow, a priest "of the Greek rite, was there." At p. 19, l. 20, "I am, of course, anxious that "they (this Congregation) should not leave my Church. I promised them "assistance towards building their church and in providing them with a priest. "The rule in our Church is that where there is no corporation the bishop is the "administrator of all Church property and holds the title."

The Plaintiff Melnyk, at p. 41, l. 22, admits, "I know that the French Roman "Catholic bishop wanted to get the land upon which our church is built." P. 41, l. 23, "He attended a meeting at Polushie's house. I heard him say there, "'What is the matter with you, you don't stay with your own religion?' When "Father Alexandroff was there and was trying to arrange for a church the French "bishop came out and said to us, 'What is the matter with you? Stick to your "own religion, your priest will soon be here.' He told us that if we would get "out the logs he would help us to build a church. He said that if we would keep "our religion he would help us and would see that we would get a priest. When "we first came we did not know whether we could get the land free or not. We "told him we were trying to get the land. He then said that he would help us. "It was after that that Father Alexandroff came and it was after he came that the "French bishop asked us why we did not stay with our religion."

Spaczinski, p. 27, l. 43, says, "The bishop promised to get them the land, "to provide all they required for the church except the logs and to get them a "priest. x x x x He never supplied anything for the church nor got them "a priest. Father Tymkiewicz told us not to take anything from the French "bishop. Father Dymytrow told us to take anything we could get but not to "sign anything. Father Tymkiewicz told us that if we took anything from "the French bishop we would belong to his Church. He told us not to be under "the control of the French bishop, he told us that Bishop Legal had offered him "$50.00 per month to stay but that he would not accept anything from him. He "left us because we could not support him." At p. 28 Spaczinski says (l. 22), "The Congregation had a meeting to get land for the church. They

"instructed a committee to see Mr. Oliver, M.P., about it. I once went with "them to Edmonton about it. x x x x x It was before the bishop got "the land that I came to Edmonton about it."

The Defendant Melnyk says, p. 132, l. 26, "The French bishop asked us if "there was anything we wanted to build our church with and Father Dymytrow "told us to take everything we could get but not to sign anything. *Q.* Did you "ever take anything from the French bishop? *A.* No."

Iwan Pylypiw, p. 102, l. 30, says, "Bishop Legal visited our parish during "Father Dymytrow's second visit. He did not speak to us but he spoke to "Father Dymytrow, who told us the bishop was asking why we had left our "own religion. This was at a service at the school house on a holiday. Among "those present were x x x x x Petro Melnyk, Spaczinski, x x x "Father Dymytrow also told us that we should not sign anything to the bishop. "We never received any assistance from the bishop."

Father Tymkiewicz.

Spaczinski says he arrived in April, 1898, and left in August, 1898: p. 24, l. 26. At l. 33, "During the time Father Tymkiewicz was there there was no "trouble." See also p. 27, l. 43, quoted above.

Peter Melnyk, p. 41, l. 38, "When Father Tymkiewicz came he told us that "the land should be held in our own name instead of in the name of the bishop. "x x x x We were all agreed. x x x x."

Iwan Pylypiw, p. 102, l. 38: "I think that it was in the following year when "Father Tymkiewicz came. Just before he came we got word from the "Government that the French bishop had entered for the land for our church. "We had a meeting and decided to try and get the land out of his hands. Father "Tymkiewicz then arrived and was present at that meeting. He told us that "we should try and get the land back from under the Roman rule. We got "the land back. Father Tymkiewicz told us not to take a single thing from the "French bishop. That he himself had been offered $50 per month and a horse "and rig to drive around with but that he had refused to accept it. After he "left us we were a long time without a priest. There was a Polish priest out "there but we did not go to hear him. Father Alexandroff then came with "Father Kamneff and remained about a week."

April, 1900, meeting with Wostok congregation to get a priest.

Pylypiw, p. 103, l. 27, "After Father Tymkiewicz left we had a meeting "about getting a priest. It was held at Danczuk's place (this man took "communion from Father Alexandroff, renouncing Rome, and had his house "blessed), about ten miles from the church in question. Danczuk's house was "about three or four miles south of the Wostok church. The Wostok church "is about six miles north-easterly from the church in question. Among those "present at the meeting were the three lay Defendants and other members of "the Star Congregation. Also some members of the Wostok congregation. "Among the latter were Joseph Prochinski, also a son-in-law of Brik's, also

"Iwan Kudrik. Both congregations wanted to get the same priest. I do not "remember whether there were any Bukowinians present. There was a big "crowd there. We figured up that with the Bukowinians there would be about "three hundred families, and we could therefore raise about six hundred or seven "hundred a year for the priest, and that he could attend to the whole outfit, "including the Bukowinians. There was considerable discussion about what "should be paid the priest."

Wasyl Pulishie, p. 113, l. 29, "I was at the meeting at Danczuk's, at which "the letter was written to Father Zachlynski. It was held there because it was "a central place for our people, the Wostok people and those farther east to meet. "At the meeting there was quite a row, as some people were disputing about the "priest's salary. I saw some people writing, but I cannot tell who wrote the "letter. I did not hear it read. I do not remember whether I saw anyone write "their names. I heard some one call on others to come and sign a paper," &c.

M. Melnyk, p. 133, l. 38: "*Q.* Did you go to the meeting at Danczuk's house? "*A.* Yes. *Q.* Why was that meeting held at Danczuk's? *A.* We held that "meeting there on account of Zacklynski. *Q.* Where did Danczuk live? *A.* "Five miles from my place. *Q.* How far from the church at Star? *A.* Eight "miles. *Q.* Why did they hold the meeting so far away from the church? *A.* So "that the upper ones could join too. *Q.* What upper ones? *A.* The Prochinskis "and several more who lived east."

Father Zachlynski.

Feniak says of him, p. 78, l. 34, "I was at the first service held by Father "Zachlynski. He told us that he belonged to the Eastern Church, that he was a "Greek-Catholic Orthodox priest. *Q.* Do you know the cause of the quarrel "between the lay Defendants and Father Zachlynski? *A.* I found out that the "lay Defendants as Trustees had lent him $20 and had advanced him $17 to buy "furniture. The house that Father Zachlynski was supposed to live in was not "finished when he came and he wanted it finished. We told him that we had no "money to finish it. He told us to go to the bank and borrow $300 to finish the "house. We told him that two or three of us could not borrow for the whole "Congregation. He then suggested that the Trustees should apply to the French "bishop for $300 and that we should assign the church to him for three years. "That the bishop would be glad of this and would give the money. We concluded "that he was not the right man for us as he would send us to a Roman Catholic "bishop. When we found this out we wanted to get the money back that the "Trustees had advanced him." P. 83, l. 39, "I had told Father Zachlynski "in the presence of Pasemko and Fedor Melnyk that he should never enter the "church again until he showed a paper showing what bishop he belonged to." P. 84, l. 25, "At the last regular service held by Father Zachlynski, he announced "that he was going to leave us. That was the time he wanted us to swear as "provisors."

Fedor Melnyk, at p. 87, l. 15, says, "Father Zachlynski came during the "one summer and I think he left during the following summer. x x x I never "signed any document that was sent to him. I did not hear read any document

"that was sent to him. x x x I was at the first meeting after he came. It "was held at my house. There were a lot of people there, including the Buko- "winians. I was at his first service in the church. There were so many there "that all the people could not get in." P. 88, l. 32, "At Father Zachlynski's "first service in the church he said, 'Our religion comes from the Eastern Orthodox. "'The Western Church does not concern us. We have nothing to do with it.' "The worst trouble started with him then. He wanted to get $300 from the "French bishop. He said to the lay Defendants and Feniak and me that we "should sign the church over to the French bishop for three or four years to get "money to finish the priest's house. This opened our eyes to the fact that he "was pulling us to the Latin Church. Then he wanted to elect or pick out Trustees "(provisors) and wanted them to swear at the church. They did not want to "swear. Wasyl Feniak asked what he wanted them to swear to. He replied "that they should swear to do as he told them to do. They did not swear, and "when they refused he told them he would not be their priest any longer." At p. 90, l. 39, "I turned him (Zachlynski) out of my house at the time he wanted "to get $300 from the French bishop."

Michael Polushis, p. 98, l. 12, "I was at Father Zachlynski's first service in "our church. When he arrived he told us that he belonged to the Greek Catholic "Orthodox Church and to the Eastern Church." x x x L. 21, "He then "suggested that we should go to the Roman Catholic bishop and sign over the "church to him for security for the loan of $300. When he first came he told us "that he had nothing to do with that bishop. When he made this proposition we "knew that he was a Roman priest and not of our own faith. The Congregation "never had anything to do with the French bishop."

Pylypiw, p. 104, l. 38, "When Father Zachlynski came our church was the "only one that was finished. We all attended Father Zachlynski's services, "including the Bukowinians. The Nymyrskis, who belonged to the Wostok "congregation, also attended. Among the leading members of the Wostok "congregation were Constantine and Fedor Nymyrski, Lakusta and Ker Pro- "chinski. Among the members of that congregation who attended Father "Zachlynski's services throughout the summer were Hawrelynko, Maceborski "and quite a few others. Danczuk belonged to our Congregation, but he some- "times attended the Wostok church. Some of those who attended his service "were from the east of Wostok church, some being Bukowinians." P. 108, l. 43, "It "was not for a long time after he came, about two or three months after, that I "first heard that he (Zachlynski) recognised the Roman Catholic bishop as his "superior. It was upon a trial before Justice Holmes and McLean of a charge "preferred by Zachlynski against Wasyl Feniak that I first heard that the former "was under the French bishop. That was after Christmas."

Mike Melnyk, p. 134, l. 42: "*Q.* Were you there when Father Zachlynski came "to his first service? *A.* I was. *Q.* Did he state who he was or anything about "himself? *A.* He said, 'I am a Ruski priest. My Church is that of the East.' *Q.* "Did you ever afterwards find out anything different concerning him? *A.* We "did not find out anything different at first. *Q.* Did you ever find out anything "different? *A.* We found out then that there was a difference. After he said "'I am not going to be your priest' and was going to go away. *Q.* What hap-

" pened at this time when you found that out ? *A.* We found out when he said ' I " ' am under the Bishop of St. Albert.' *Q.* On what occasion did you find that " out ? Do you know of any trial in which Father Zachylinski was concerned ? " *A.* Yes. *Q.* What was the trial about ? *A.* Feniak sued Zachylnski. *Q.* " Wasn't it the other way round ? *A.* Yes. x x x *Q.* And they held the " trial where ? *A.* Before Holmes, J.P., at Star. *Q.* Was it at that case you " found out that Zachlynski was under the Bishop of St. Albert ? *A.* Yes."

From the foregoing extracts it will be clearly seen that the Congregation refused to acknowledge the supremacy of the Pope and of his Lordship, Bishop Legal, that they refused the jurisdiction and discipline of the Uniate Church.

" No doctrines ought to be taught which are opposed to the opinions of the founders."

Att.-Gen. vs. Pearson, 7 Sim. 200.

" Where one party proposes to carry out the original scheme of the charity " and the other party favours some alteration, the leaning of the Court must " be to the former, however useful it may judge the proposed alteration to be."

S. C. 3 Mer 418.

No one can for a moment doubt but that if the Plaintiffs are allowed to succeed and if a Uniate priest, such as Father Zoldac or Father Philas, is placed over the Congregation in question, the result will be that a complete reversal will take place in the character and usage of the Congregation.

On the facts presented, so far as the Congregation is concerned, it cannot be contended that the priests, Dymytrow, Tymkiewics and Zachlynski were Uniate priests. The Defendants' evidence as to their disavowal is nowhere controverted by members of the Congregation. Their actions, except the later actions of Zachylinski, were wholly inconsistent with their being Uniates. Almost the only evidence in favour of the assumption is hearsay evidence of Bishop Legal, which is entitled to no weight. The claim that priests, or the Congregation, could act directly contrary to the rule of the Church in the matter of the jurisdiction, &c., of the Roman Catholic bishop, is wholly erroneous in law and in fact.

For these, and the reasons disclosed by the evidence, the Appellants submit that this action should be dismissed with costs.

They further point out that the Plaintiff Zachlynski had no standing in the Congregation at the time when the amendment whereon the Plaintiffs succeed in the Court below was made.

Dated at Edmonton, this 9th day of July, A.D. 1904.

WM. SHORT,
Of Counsel for Appellants.

Respondents' Factum.

RECORD.

In the Supreme Court of Canada.

No. 73.
Factum of Respondents, 4th April, 1905.

[Note.—*The references to evidence, &c., have been altered to correspond with the paging of this Record.*]

I.—History of the Case.

The Plaintiffs, Pavlo Pasemko and Petro Melnyk, the Defendants, Michailo Polushie, Iwan Pylypiw and Michailo Melnyk, as well as all the other persons now or formerly belonging to the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., are Ruthenians or Little Russians, natives of Galicia, and came from that country to Alberta at periods ranging from twelve to three or four years ago.

In Galicia there are three separate branches of the Catholic Church, all under the supremacy of the Pope and owing allegiance to him, but differing from one another in their liturgy, rites and observances, while all holding in its entirety the faith of the Roman Catholic Church. These three branches are:—

1st. The Roman Catholic Church to which all the Poles in Galicia belong, and from the earliest history of the country have belonged.

2nd. The "Greek Catholic Church" officially so called, also known by the names, the "Greek Uniate Church," the "Greek Catholic Uniate Church," or the "Uniate Church" simply, also very commonly called the "Ruthenian Catholic "Church" or "Catholics of the Ruthenian Rite." All Ruthenians, otherwise called Little Russians, in Galicia belong to this Church.

3rd. The Armenian Catholic Church, a body much smaller than the other two, and whose adherents are principally people of foreign and eastern origin.

Whatever may have been the cause of the formation of the second-named Church, which is named throughout this factum as the "Greek Catholic (Uniate) "Church," whether it be by the Church of Rome forcing the Ruthenians, who were all from the earliest times adherents of the Greek Church, using the Greek or Eastern liturgy and form of worship, to submit to the rule of the Pope, or whether on the other hand the Ruthenians never had adhered to the remainder of the Greek Church at the time of the schism, but had always maintained their allegiance to the Pope, it really matters not for the purposes of this suit. Although a great deal of time was lost at the trial in the futile discussion of this vexed historical question, the fact remains unquestioned that all the Ruthenian race in Galicia have for several centuries been Greek or Eastern in their liturgy, rites and ceremonies, while acknowledging the headship of the Pope and adopting without any reservation whatsoever the creed of the Roman Catholic Church, or in other words, Greek—Catholic—Greek in rite, Catholic in faith.

The people of Russia, who comprise Great, Little and White Russians, have from the earliest dawn of Christianity belonged to the Greek or Eastern Church, and at the time of the great schism as a body, but with some exceptions, severed their connection with Rome for ever. In the years which followed upon the Conquest of Poland all the people of Little Russian race in Russia and Poland who still adhered to the Greek Catholic Uniate faith, were brought, whether by force or conciliation it matters not, into the fold of the Russian Orthodox Church, the last remnant of Uniate faith being stamped out in Russia some 30 years ago.

Austria nominally tolerates all Christian religions, but in Galicia on account of the fact that the great bulk of the Galician people are Little Russians, speaking the same language as the perhaps twenty millions of Little Russians in the Russian Empire, and therefore likely to be easily Russianised, the Austrian Government having a fear that the authorisation of the Russian Orthodox Church in Galicia might very likely and very successfully be used by priests of Little Russian origin as a powerful political lever, has strictly forbidden the Russian Orthodox religion to be practised or preached within the borders of Galicia, whereas in the neighbouring province, the Grand Duchy of Bukowina, where the most of the population is Roumanian, and therefore not subject to Russian influences, the Greek Orthodox Church, which is identical with the Russian Orthodox Church in faith and worship, is tolerated and exists side by side with the Greek Catholic Uniate. It results from these facts that every Galician of Ruthenian or Little Russian race could not possibly have been anything else but a Greek Catholic Uniate at the moment he left Galicia, and could never have entered any church or heard any worship of the Greek Orthodox faith, which is, of course, that of the Russian Orthodox Church.

The great mass of Russia's population are called Great Russians, and speak a language so much differing from the Little Russian or Ruthenian that neither race can properly understand the other and communication between them, each speaking their own tongue, is very difficult and liable to cause misunderstandings.

The Russian Orthodox Church is the national Church of Russia, and as a body deeply interested in the progress of its country. In all parts of the world where Greek Catholic Uniate colonists are found the Russian Orthodox Church feels it is in duty bound to try to bring these people back, as they call it, to the true fold, in other words to get them to abjure the Pope and the Roman Catholic doctrines and thereby become Greek Orthodox, which fits them for admission into the Russian Orthodox Church. The fact that one of the terms which the Ruthenians apply to themselves (such term being different from that which they apply to the Russians of Russia or Great Russia) sounds exactly like the generic term which the Great Russians apply to themselves, and the further fact that the Ruthenians are in a sense Russians, that is Little Russians, gives the Russian Orthodox Church a great foothold in their attempted work of conversion. This action arose out of one such attempt on the part of the Russian Orthodox Church to convert a whole congregation of Greek Catholic Uniates to the Russian Orthodox Church and take possession of the church and lands which had been acquired for the purposes of the said Greek Catholic Uniate Church.

Plaintiffs aver that the Ruthenians in the Star settlement from the various times of their arrival there up to the commencement of this action adhered unbrokenly to the faith they had learned in Galicia, but the Defendants and the few others of the Congregation siding with them, contended at the trial with great vigour and earnestness that the Congregation had a very early date in the settlement of the district gone over in a body to the Russian Orthodox Church under the ministrations of the Reverend Father Kamneff and his then assistant, now Father Alexandroff, and that, while apparently adhering to the Greek Catholic Uniate faith they were really at heart Orthodox and refused to recognise the supremacy of Rome. The Plaintiffs contend in reply that there never was any refusal on the

part of any of the Congregation to recognise the supremacy of Rome, or to depart in any degree from the Roman Catholic faith, and that the utmost which any of the Congregation had ever done was to express their disapproval of the property of the Church being vested in a Roman Catholic bishop, there being no Greek Catholic bishop as yet appointed in America.

The issues were very much clouded during the trial by the persistent claim made by the Defendants that the name " Greek Catholic " was as much a name of the " Russian Orthodox Church " as it was of the " Greek Catholic Uniate Church " and that the certificate of title for the lands as it read, " Greek Catholic," might mean either one of the two contending Churches. The Plaintiffs on the other hand contend that only one Church in the world is called officially the " Greek " Catholic Church," and that this is the " Greek Catholic Uniate Church of Galicia " ; that, if the word " Catholic " is ever applied as a name to the " Greek Orthodox " Church " it is a manifest contradiction of terms and could only possibly be used by ignorant persons. The " Orthodoxy " of the whole Greek Church as opposed to " Catholicism " is almost too well known to require argument. No Church in the world, other than the Episcopal Church of England, uses in one of its names the word " Catholic " unless it be under the dominion of the Pope. It may, of course, use the adjective Catholic, in describing itself, but the whole of the Greek Church takes pride in using the word " Orthodox " in special contra-distinction to the word " Catholic " and speaks of the " Roman Catholic " and " Greek " Catholic " Churches as Protestants do, using the simple word " Catholics."

At the inception of the trial the Plaintiffs, who had originally sued as Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., obtained an amendment enabling them to sue in the alternative as private individuals, as priest and members of the said Congregation, suing on behalf of themselves and all the other members and adherents of said Congregation, and at an early stage in the trial abandoned their claim as Trustees. The judgment in their favour is given in their second or alternative capacity.

The issues are further somewhat obscured by the Defendants using a large number of different names in describing their Church. The judgment of the Honourable Mr. Justice Scott waives the question as to whether the Russian Orthodox Church may have been entitled to call itself " Greek Catholic " among other names, as well as the Plaintiffs' Church, but his judgment is clearly to the effect that the particular " Greek Catholic " Church which built and owned the church in question is the " Greek Catholic Church of Galicia," under the supremacy of Rome. The difficulties and obscurities raised by the question of name have therefore little bearing on the appeal.

II.—Comments on Pleadings and Issues.

The issues raised by the pleadings as they now stand are as follows :—

(a) Whether the Plaintiff Zacklynski was a priest of the Greek Catholic Church, and was duly appointed by the proper ecclesiastical authority of the Greek Catholic Church to the charge of the Congregation at Star. (Par. 3 statement of claim, Record, page 3, line 29, and Par. 3 of defence, page 5, line 31.)

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No. 73. Factum of Respondents, 4th April, 1905 —*continued.*

(b) Whether the moneys of the Congregation were by the Defendants, then the Trustees, formally handed over to Michailo Podruski, a new treasurer appointed by Reverend Father Zacklynski, and afterwards on January 27th, 1901, forcibly taken away by them, or whether said Podruski wrongfully obtained possession of the same and subsequently returned them to Defendants on request. (Par. 4 and 5 of statement of claim, page 3, lines 34–47, and Par. 4, page 5, lines 37–41 of defence.)

(c) Whether the Defendants in January, 1901, shortly after the 27th severed their connection with the Greek Catholic Church and became members or adherents of the Russian Orthodox Church, or whether the Russian Orthodox Church is one and the same Church with the Greek Catholic Church, and the Defendants had the advice and approval of the members and adherents of the Congregation of the Greek Catholic Church in all their doings. (Par. 6 of statement of claim, page 4, lines 3–15, and Par. 5 of defence, page 5, line 3, to page 6, line 2, and 2 of reply, page 7, line 12.)

(d) Whether the acts of Defendant Korchinski as set out in Paragraph 7 of the statement of claim, page 4, line 16, were a usurpation of the position of priest over said Greek Catholic Congregation against the will of the great majority of the Congregation, or whether as stated in Paragraphs 8 and 9 of the defence, Plaintiff Zacklynski had severed his connection with the Congregation, whereupon the majority of said Congregation requested Defendant Korchinski to become their priest, which invitation he accepted and is now the lawful priest thereof. (See also Par. 3 of reply, page 7, line 15.)

(e) Whether Defendants and others acting with them were caused by Defendant Korchinski to forswear their allegiance to the Pope and promise fidelity and obedience to the Czar of Russia as the head of their Church, or whether it be true that the Defendants had never at any time acknowledged allegiance to the Pope. (Par. 7 of statement of claim, page 4, line 16, and Par. 10 of defence, page 6, line 36, and 4 of reply, page 8, line 31.)

(f) Whether Plaintiffs demanded from Defendants the certificate of title for the lands whereupon the church stands and the key of the said church. (Par. 8 of statement of claim, page 4, line 29, and 11 of defence, page 6, line 40.)

(g) Whether Plaintiffs as representing the Congregation (other than Defendants and their few adherents) were entitled to the possession and the title of the church, and whether they were ever excluded from the church. (Par. 9 of statement of claim, page 4, line 33, and 12 of defence, page 6, line 42.)

(h) Whether the Plaintiffs are members or adherents of the Roman Catholic Church. (Par. 13 of defence, page 6, line 46 and joinder of issue, and Par. 5 of reply, page 7, line 25.)

The above issues are thus disposed of by the judgment appealed against:—

(a) Not decided in so many words, but in page 173, lines 36 and 37 of the Appeal Book, Scott J. finds that Zacklynski was authorised by Bishop Legal to take charge of the Congregation, and further back in the judgment, page 171, lines 39–44, he clearly decides that the proper ecclesiastical authority over this Congregation is the Roman Catholic Bishop of St. Albert.

(b) There was no real necessity for deciding this issue formally, the undisputed fact remaining that the moneys and the key rightly or wrongly came into the

hands of the Treasurer, Michailo Podruski, and later back into the possession of the lay Defendants who refused on formal demand to give them up.

(c) The findings on this issue are to be found in the judgment appealed against, page 170 of Appeal Book, lines 28 et seq. to page 171, line 24.

He does not decide the point whether the Defendants in their doings had the support and approval, but it is clear out of the mouths of the Defendants themselves and their witnesses that the invitation to Father Korchinski was at first given by only seven members out of three hundred in the Congregation and that with all their efforts only at most eight others joined them.

Wasyl Polushie, Appeal Book, page 113, line 46, to page 114, line 7, page 115, lines 3 to 8.

Iwan Pylypiw, Appeal Book, page 107, line 47, to page 108, line 5.

(d) Evidence above recited covers the question raised here, except as to whether Father Zacklynski had left the Congregation.

See in judgment Appeal Book, page 176, lines 31 to 40.

(e) Judgment, page 173, line 42, to page 174, line 9.

(f) Exhibits L, page 162, and N, 163, prove the alleged demand and refusal.

(g) Judgment in favour of Plaintiffs on this issue. Page 174, lines 19 to 23. Page 176, lines 31 to 40. Page 177, lines 5 to 10.

(h) Judgment decides that they belong to the (Greek Catholic) Uniate Church. Page 171, lines 7 to 15. Page 177, lines 11 to 16.

III.—Principles guiding Court of Appeal.

I cite—

Arpin vs. the Queen, 14 S. C. R. 736:

"Where a judgment appealed from is founded wholly upon a question of "fact the Supreme Court of Canada will not reverse it unless convinced beyond "all reasonable doubt that such judgment is clearly erroneous."

Senesac vs. The Vermont Central Railway Co., 26 S. C. R., page 641, per Girouard J., page 646:

"The jurisprudence of the Privy Council and of this Court has been not "to disturb judgments appealed from upon mere questions of fact, unless clearly "wrong or erroneous."

Also The Colonial Securities Trust Co. vs. Massey, 65 L. J. Q. B. D. 100, per Lord Esher, M. R., page 100 "In Court of Appeal."

The questions in this case are entirely questions of fact as stated by Wetmore J., who delivered the judgment of the Supreme Court of the North-West Territories in the commencement of his judgment herein:

"The Defendants' appeal from the judgment of my brother Scott in this case "is practically based upon the grounds that that learned Judge erred in his findings "of fact and drew conclusions of fact not warranted by the evidence in some "instances or by the Judge's findings in others. No question of law is raised "except possibly one that was advanced by one of the counsel for Defendants "at the hearing of the appeal and which I will refer to later on."

RECORD.

In the Supreme Court of Canada.

No. 73. Factum of Respondents, 4th April, 1905 —*continued.*

IV.—Comments on Evidence generally.

(1)

It is necessary first, to have a clear understanding as to whether the Church of which the Rev. James Korchinski, Defendant, was the priest and of which the other three Defendants became adherents, is or is not the same Church as that of which the Plaintiffs were respectively priests and members. The evidence is absolutely overwhelming that, let it be called by what name it may be, the Church of Father Korchinski is nothing more nor less than the generally so-called " Russian " Orthodox Church," ruled over by the Holy Synod of Russia, and having absolutely no connection for purposes of government or discipline with any other one of the Orthodox or Eastern Churches of the world. No further evidence of this is required than that given by Reverend Fathers Alexandroff and Korchinski to the effect that none of the people belonging to this Congregation at Star could be lawfully received into their Church until they had first at the altar formally renounced the Pope of Rome and what they called the Romish errors, these being the points in which their Church differed from the Russian Orthodox Church. This evidence will be commented upon at length elsewhere in the factum.

(2)

The lay Plaintiffs and the lay Defendants and the whole Congregation, before emigrating to America, belonged to the " Greek Catholic Church " of Galicia, also called the " Ruthenian Catholic Church," " Catholics of the Ruthenian rite," and " Graeco-Ruthenian Church," these being the names given to it by the Church of Rome, and in reference to its relations to the Greek or Eastern Church known also as the Uniate or Greek Uniate, Greek in worship, it is Catholic, that is Roman Catholic, in faith and submission. This Church is governed in Galicia by a Metropolitan Archbishop, whose See is at Lemberg, having two Bishops under him, he himself being under the control of the Pope, but not to any extent or degree under the control or subject to the direction of the Roman Catholic Hierarchy in Galicia. All church lands belonging to the Roman Catholic Church are held by the Roman Catholic Metropolitan Archbishop or his Bishops, while all church lands of the Greek Catholic Church are held by their own Metropolitan Archbishop or his Bishops, in other words the Roman Catholic Church and the Greek Catholic Church in Galicia, while identical in faith and submission to Rome, are at the opposite poles as to worship, liturgy, ritual, ceremonies, vestments and calendar. Latin is the language of the Roman Catholic and old Slavonic and that of the Greek Catholic. It is an admitted fact, that, saving a very few trifling exceptions where a change in the prayer book is necessitated by the acknowledgment of papal supremacy and the adoption of the Roman Catholic creed, the missals of the Greek Catholic clergy and those of the Russian Orthodox clergy are identical, verbatim et literatim. Should an ignorant Ruthenian attend service in a Russian Orthodox Church, if the priest were a Little Russian and spoke with a familiar accent, he could not possibly tell whether he were in a Russian Orthodox Church or a Greek Catholic Church, unless he

watched the parts of the service in which the Creed and the prayers for the Pope came in.

" Encyclopaedia Britannica," Vol. 10, page 25, under title " Galicia."

" According to the law of 1861 the diet of Galicia consists of the three Arch-
" bishops (those of the Roman Catholic, the Greek Catholic, and Armenian Catholic
" Churches, &c.). The two principal nationalities in Galicia are the Poles and
" the Ruthenians."

" Encyclopaedia Britannica," Vol. 20, page 630 and 631.

" The Oriental Churches in communion with the Holy See holding the same
" belief, and the same principle of authority as the Latin Church, have their own
" special rites, discipline and liturgical language. These are chiefly the Greek,
" Melchite, Bulgarian, Ruthenian, Maronite, Syro-Chaldaic, Coptic, Armenian
" and Roumanian rites."

" Ruthenians. The Ruthenians attribute their conversion to Christianity
" to St. Methodius and his brother St. Cyril. In Galicia they have one Metropolitan
" (Lemberg) and two Bishops. They have a Greek Ruthenian College at Rome,
" and another in Vienna."

(3)

As the question whether the persons present at the meetings held in 1897 by Father Kamneff and his assistant, now Father Alexandroff, could follow and properly understand what Father Kamneff said is of some importance in judging what really was done at those meetings by those present belonging to the Congregation at Star, I state that the language of the Ruthenian people is called by them " Ruski," while they call the Russian of Russia " Rossijski." They call themselves " Rusyny " and the Russians " Moskalem." The Great Russians call themselves again " Ruski," and ignoring altogether the term " Rusyny " (proper English translation " Ruthenians ") call the Ruthenians " Malo-
" Rossiane," or " Little Russians." It will therefore be seen that the words " ja Ruski " spoken to an audience of Ruthenians would be understood by them to mean " I am a Ruthenian." Many Little Russians in Russia also use as the name for the Little Russian race " Rusyny," and if therefore Father Alexandroff used the words " ja Rusyn " his audience would clearly understand him to mean, " I am a Ruthenian," that is one of your own race. This misunderstanding and misapprehension might exist without any ill intention on the part of the reverend gentleman. Father Alexandroff is a Little Russian and speaks almost identically the language of the Ruthenians of Galicia. Father Kamneff speaks only Great Russian.

I cite with regard to the difference of these two races and two languages. " Encyclopaedia Britannica," Vol. 22, page 145, under head " Slavs."

1. South-eastern division.

Russians.

(a) The Great Russians, " Velikorouski," who occupy the Governments around Moscow and extend as far north as Novgorod and Vologda, south to Kieff and Voronezh, east to Penza, Simbirsk and Vyatka, and west to the Baltic provinces and Poland. They number about 40,000,000.

(b) The Little Russians, " Malo Rossiane," who include the " Rousines "

(anglicised spelling of Rusyn) or Rousnaks in Galicia and Boiki and Gouzouli in Bukovinia. They number 16,370,000. Drawing a side line from Sandec near Cracow to the Asiatic frontier of Russia we shall find their language the dominant tongue of Galicia and of the southern parts of Russia until we come to the Caucasus. It is also spoken in a strip of territory in the north of Hungary.

(c) The White Russians inhabiting the Western Governments.

On page 14 " Encyclopaedia Britannica " speaks of the Great Russian language and uses the expression " In the Little Russian and the Western languages." Again, " Little Russian is spoken in all the Southern Governments of Russia," and goes on to say that " there is a good grammar by Osadtza, a pupil of Miklosich. The " latter justly regards it as a language and not a dialect." It then goes on to treat of the chief characteristics which mark off the Little from the Great Russian language.

Dictionaries and grammars are published of the Little Russian language for the use of Germans, French and other European nationalities, such as Partycky " Little Russian Dictionary," and Mitrofanowicz " Ruthenian Grammar."

(4)

In case some authority be desired as to whether the Russian Orthodox Church has ever used or has any right to use the name " Greek Catholic " I refer to the " Encycl. Britannica," vol. 11, page 154, under the title " Greek Church." We find here these expressions:—" ' The Greek Church ' or more properly the ' Eastern " ' Church.' The term ' Greek ' or ' Eastern Church ' acquired gradually a " fixed meaning. It has ever been the policy of Rome to efface national distinc- " tions, but under the shadow of the ' Eastern Church ' national churches have " grown and flourished."—" The ' Greek ' Church like the ' Roman.' "—" What Rome " conquered and christianised, with the exception of Africa, remained christianised. " The old Empire was over-run by barbarians but the conquered Empire imposed " its religion upon its conquerors and pagan and heretic became in the end " ' Catholic ' Christians. In the East it was otherwise."—" The Thomas Christians " of India do not belong to the ' Orthodox Greek Church.' "—" In Syria the " Jacobites are more numerous than the ' Orthodox ' while the Maronites of " Lebanon have become subject to Rome."—" The Jacobites or Copts of Egypt " greatly outnumber the members of the ' Orthodox Greek Church ' there."— " The relation of the ' Greek ' Church to the ' Roman.' "—" In Austria and Poland " many of the Greeks were compelled to submit themselves to the See of Rome. " The result of this schism has been what is called ' Unia ' or ' United Greeks.' "— Then comes the heading,—" Differentiation of national churches included in the " ' Orthodox Greek Church.' "—" The expression ' Greek Orthodoxy '—' Orthodox " ' Eastern Christians.' "

Embodied in this is an article on the Russian Church and those of Servia, Roumania, &c. The only name given to the Church is the " Russian Church." The Church in Roumania is spoken of as the " Orthodox Greek Church." The Church in Greece is spoken of as the " Greek Church " in Greece.—" Defining the " position of the ' Orthodox ' Church of the East with regard to the belief of the " ' Roman Catholic ' and ' Protestant ' Churches."—Again the " Orthodox Greek " Church."

At the close of the article the number of the adherents of the Greek Church is given, and with regard to Turkey, Roumania, Servia, Montenegro, Greece, Austria, Russia, the Church is called the " Orthodox Greek " Church.

At the foot of the enumeration is added " United Greeks " chiefly in Austria and Poland.

Throughout the whole of this long and authoritative article the word " Catholic " only appears once and that is with regard to the portion of the world which Rome christianised. The words applied to the Church are " Greek," " Eastern," " Orthodox Greek," " Orthodox Eastern Christians," " Russian " Church," " Orthodox Church of the East."

(5)

The difficulties of this case have been trebled by the ignorance and illiteracy of most of the witnesses on both sides and the interpretation, deplorably faulty at the best, and to decide the case on such evidence alone would have been impossible ; happily there were several clergymen on both sides who were not illiterate and gave valuable light on many questions, and there were also a number of salient facts not attempted to be denied by the defence, which speak louder than words. Also the examinations for discovery of Defendants Korchinski, Pylypiw and Polushie, taken shortly after the commencement of the suit, when their story was more likely to be consistent with the facts and the truth than at a later date. In respect to these examinations I contend that in all cases where these witnesses in their evidence on trial attempt to vary materially from the evidence they gave in the first instance, the Court should accept their first statement as most likely to be true. For example, Reverend Korchinski in his deposition on discovery taken June 8th, 1901, only four and a half months after the meeting at Fedor Melnyk's on January 27th, gives the most full and explicit account of what transpired at said meeting and especially of the complaints made by the people against Zacklynski. Polushie's deposition does not deal with what was told to Korchinski at that time, but he tells some of his grievances against Zacklynski and they agree so far as they go with Father Korchinski's statement of what had been told him. Two years later when the trial was well advanced, and after the effect of every bit of evidence had been sifted and discussed, we find the people testifying for Defendants, swearing that they never told Korchinski about Zacklynski's conduct regarding the Roman Catholic bishop on his arrival. The evident reason of this repudiation of what they had said to Father Korchinski was that, to leave it uncontradicted, would prove conclusively that they had one and all known Zacklynski to be under the rule of the French bishop from the very day of his arrival and had yet sat under him contentedly for five full months. As between Korchinski, the priest, speaking five months after the event and these ignorant peasants two years and five months later, the priest must be believed.

Up to the calling of Iwan Lakusta near the end of the trial, the gist of the collective evidence as to what transpired at the services of Kamneff and Alexandroff was that although a number of people from Star had allowed their names to be written down on a list of people willing to join the Russian Orthodox Church, yet none of them except Michailo Melnyk and possibly Stefan Cziczak had

renounced the Pope and been formally received into the Russian Orthodox Church. Then Lakusta and the Defendants who, in effect, had already sworn that they had not renounced, now swore that they had renounced.

(6)

The deliberate and evidently purposeful concealment of material facts should always count strongly against the suppressors and should cause a decision against them of all issues upon which that fact, if brought out, would have thrown light.

(7)

The Plaintiffs claimed on the trial that the name " Greek Catholic Orthodox " Church " or " Orthodox Greek Catholic Church " was a name which had never existed, and was concocted by the defence for the purpose of bringing themselves apparently within the scope of the words " Greek Catholic." They further averred that the official name of Father Korchinski's Church was the " Russian Orthodox " Church " and that only. Whether they had or had not the right to use the word " Catholic " they should at least have given the Court all the information in their power as to what the name of their Church really was, and yet Father Korchinski, who twice promised to produce his certificates of ordination as deacon and as priest, twice broke his promise. Father Alexandroff refused to permit a copy to be taken of his certificate of ordination hanging on the wall of his room at Seattle, Washington.

See minutes, Appeal Book, page 95, lines 23 to 34.

It was also promised by the Defendants' Witness, Father Skibinski, that he should bring into Court his certificate of ordination, but that too was not forthcoming.

Page 102, lines 1 to 7; page 102, lines 20 to 22.

(8)

A change of base on the part of either party if material should invite careful scrutiny and should operate against the party making it unless it clearly appears that the position as taken was the result of a mistake.

See first defence of Korchinski and his evidence on deposition, page 155, lines 30–35; page 156, lines 1 to 20; page 156, line 28, to page 158, line 3.

Also his second defence, page 7, line 34, and the evidence, page 52, lines 4 to 37, and line 44; page 54, line 12 to 28; page 55, lines 35 to 40; page 55, line 41, to page 56, line 11.

There has been an entire change of base on the part of the Defendants as to what the Star Congregation were. They first claimed that they never were Uniates at all, even in Galicia, and never held Roman Catholic doctrines and that Father Zacklynski under guise of being a Greek Catholic Orthodox priest tried to lead them over to Rome and the great bulk of the Congregation adhered to him, that they, the Defendants and their adherents being still of the Greek Catholic faith, seized, locked and held the church for those of that faith for whom it was intended.

Their evidence does not support this plea at all but one to this effect, " True, " our Congregation was called ' Greek Catholic ' and our certificate of title " reads so, but what we understood by that and what Father Tymkiewicz meant " by that when he gave that name in the Land Titles Office was ' Greek Orthodox.' " You Plaintiffs are not Roman Catholics but just about as bad—Uniates. True " we had to pretend in Galicia that we believed in the Pope but we never did so " really, and here we do not need to, so if you want to pray for the Pope and be " under his rule you cannot do it in this church. We, Orthodox despite the name, " are the true Greek Catholics, and the church is ours."

The second change of base, which was introduced with the evidence of Lakusta and forthwith corroborated by a large number of witnesses who had been examined before and told a totally different story, was this: " We were Uniates in Galicia. " We had to be, but at Father Kamneff's first service we all formally renounced " the Pope of Rome, and as our church was built after that, it was built by Greek " Orthodox people for Greek Orthodox people and the name is a mere mistake " and has no weight at all."

V.—Law of Case.

Plaintiffs contend that the law regarding the ownership of a church held by trustees for a congregation of a given faith is as follows:—

That so long as one single individual of the congregation remains faithful to the faith mentioned in the documents of titles held by the trustees the trust, inures to his benefit, and if that one individual also changes his faith the trust lapses and the original owner from whom the title proceeded or his heirs and assigns regains the title. It would therefore be sufficient for the Plaintiffs' purpose, once having proved that the Congregation in question were Uniates, to show that one solitary member remained a Uniate, but in this case Plaintiffs are able to go much further and it is beyond argument that an overwhelming majority of the Congregation are still and continuously have been of the Uniate faith. The highest number the Defendants' witnesses claimed as having gone over to the Russian Orthodox Church, jointly with them, was 15, and it is in evidence uncontradicted that there were about 300 members in the Congregation.

Respondents cite the following cases in support of this legal contention.

Attorney-General vs. Anderson, 57 L. J. Ch. D. 543, quoting from judgment of Kekewich, J.

From the words on p. 549, first col. and on to second.

" But I understand Lord Eldon (Attorney-General vs. Pearson 3 Mer. " p. 353.) to really lay down the law " * * * * * to the words " in contravention of the deed of trust or foundation."

Again at page 550, first col.

" But this to my mind is quite clear." * * * * to " No majority would be sufficient."

Again on same page, second col.

" The real answer of course is that which " * * * * " One dissentient is enough for that purpose."

Attorney-General vs. Christie, 13 Grants Ch. Reports Ont. at page 495.

Van Koughnet C. on page 497 says:—

"It is quite true that many years later" * * * * "and insist on holding and using it."

Attorney-General vs. Jeffrey, 10 Grants Ch. Reports, Ont. 273.

"In this case certain lands" * * * * * "and take steps for the recovery of the church."

Esten, V. C., in giving judgment says on page 277:—

"But it is an undoubted fact that the gift" * * * * "or Baptists would be."

Again:— 10

"I am satisfied that I shall be acting" * * * * "the dissolution of the old one."

VI.—Evidence Classified as to Matters Proven.

The various conclusions which Plaintiffs contend are clearly established by the evidence, and the evidence bearing upon each of the same are as follows:—

Note.—To avoid confusion and misunderstanding of the evidence throughout this Case it must not be forgotten that the interpreters were in every instance illiterate men who were not acquainted with the English word "Ruthenian," and on account of the resemblance of sound between "Ruski" and "Russian" persisted, despite being constantly corrected, in rendering the word "Ruski" 20 or "Ruska" or "Rusyn" as "Russians." It will therefore be necessary, in order to properly understand the evidence, to read "Russian" as "Ruthenian" wherever allusion is made to the people of Galicia. For example, Iwan Sachman is made to say, "All Russians in Galicia attended one church." This is entirely unmeaning as there are no Russians in Galicia, and should be read and understood, "All Ruthenians in Galicia attended one church," or if the word "Russians" must be used the word "Little" must be prefixed—"All Little Russians in Galicia."

On this point the "Encyclopaedia Britannica," Vol. 21, page 67, might be quoted where the writer says:—

"Three different branches which may become three separate nationalities 30 "can be distinguished among the Russians since the dawn of their history, the Great "Russians, Little Russians and White Russians."

(1)

The whole Congregation at Star before emigrating from Galicia to Canada could only have belonged and actually did belong to the Church officially known as "The Greek Catholic Church," but which has also a number of other names, according to the nationality or religion of the person who speaks of that Church. For example, the Ruthenians themselves call it, "Our Ruthenian Church." The Poles call it, "The Ruthenian Church." The Ruthenians in turn call the Roman Catholic Church the "Polish Church." The Church of Rome also calls it the 40 "Ruthenian Catholic Church," "Catholics of the Greek Rite," "The Graeco-"Ruthenian Church," and outsiders, in order to give it a name properly describing its relation to the Greek Church and the Catholic, call it "Uniate" or "Greek

Uniate," that is Greek in worship, Catholic, that is Roman Catholic in faith and submission.

Reverend Wasyl Zoldak, pages 9, 10, 11.

Right Reverend Emile J. Legal, page 15, line 6 to line 32.

Reverend Father Filas, page 45, line 29 to page 46, line 25.

It is shown clearly that the Metropolitan Archbishop of each one of the three Catholic Churches in Galicia holds the title to the church lands of his own particular Church.

Zoldak, page 11, lines 7–11.

Filas, page 46, lines 22 to 24.

Nikolai Spaczinski, page 20, lines 4–15; page 31, line 41.

Reverend James Korchinski (Defendant).

Examination for discovery. Appeal Book, page 156, lines 1–13.

Petro Melnyk, page 36, lines 9–24; page 39, line 33.

Iwan Workun, page 42, lines 22–23; page 43, lines 11–24.

Michailo Cziczak, page 44.

Iwan Hluszak, page 45.

Michailo Romaniuk, page 48, line 32 to page 49, line 2.

Pavlo Pasemko, page 49, lines 19–31.

Wasyl Feniak (of Defendants' party), page 79, lines 33–36; page 79, line 45, to page 80, line 3, and lines 15–19.

Fedor Melnyk (of Defendants' party), page 89, lines 26–31.

Rev. Father Alexandroff (of Defendants' party), page 94, lines 31–35; page 95, lines 37–41.

Michailo Polushie (Defendant), page 98, lines 26–32; page 161, lines 21–22; 30–33.

John Fuhr (called by defence), page 103, lines 13–20.

Iwan Pylypiw (Defendant), page 106, lines 33–35; page 108, line 11 to 24.

Iwan Sachman (Defendants' Witness), page 110, lines 34–39.

Iwan Lakusta (Defendants' Witness), page 119, lines 17–26; page 120, lines 13–27.

(2)

It is manifest from the evidence that the people of this Congregation were so grossly ignorant that they knew nothing when they came here of either Russia or its Church. Most of them had never seen a Russian to talk to and they had no knowledge of the Russian Orthodox Church, for which they had but one name, taught them by their priests, namely "The Schismatic Church."

Spaczinski, page 20, line 4.

Petro Melnyk, page 41, l. 18–22; page 42, l. 8–11.

Fedor Melnyk (of Defendants' party), page 89, l. 32–33.

Wasyl Feniak (of Defendants' party), page 80, lines 13–14.

Iwan Lakusta (of Defendants' party), page 121, lines 17–21.

(3)

The conduct of the people, Plaintiffs and Defendants included, from the early spring of 1897 until the very day on which the Defendants invited Father

Korchinski to be their priest, being January 27th, 1901, showed that they had continuously been in this country what they were in Galicia before coming, that is Uniates.

(a) The first step towards any organisation for religious purposes was the first visit of Reverend Father Nestor Dmytrow, a Greek Catholic priest, who came on the 18th day of April 1897 to the Star settlement. The evidence bearing on his first visit and what then transpired is as follows:—

Spaczinski, page 20, l. 15–34.

Petro Melnyk, page 36, l. 25–26; page 42, l. 7–8; 12–14.

Wasyl Feniak (of Defendants' party), page 77, l. 3; page 79, l. 24, 28–29.

Fedor Melnyk (of Defendants' party), page 86, l. 9–13; page 89, l. 41 to page 90, l. 2.

Michailo Polushie (Defendant), page 97, l. 36–39.

Iwan Pylypiw (Defendant), page 100, l. 31–32.

This evidence shows that during his first visit Father Dmytrow was cordially accepted by all the people as being a clergyman of their own faith, that he consecrated the cemetery, blessed their Easter bread; and that the services conducted by him were the same as those conducted in Galicia.

Two of the Defendants' witnesses, Sachman and Lakusta, proved that the site of the Star church, being the same site where the cemetery was consecrated, had already been selected when Father Dmytrow was there, and that he told the people to fence the cemetery, put up a cross, collect moneys, and make entry for land and take other steps towards the formation of a congregation.

Sachman (of Defendants' party), page 110, l. 19–23.

Lakusta (of Defendants' party), page 143, l. 45 to page 144, l. 4.

Wasyl Polushie, page 114, l. 20–22.

(b) The second step which shows that these people were Uniate were the visits of Bishop Legal, during the summer of 1897. It appears clear that Bishop Legal held services there both alone and in conjunction with Father Dmytrow on the second visit, when he addressed the people with regard to their forming a congregation and building a church, through the interpretation of Father Dmytrow. That at a celebration of Mass according to the Greek rite by Father Dmytrow, Bishop Legal was present in his canonicals, sitting by the altar, and pronounced the pastoral benediction, and that the people, including the Defendants, asked the Bishop to secure lands for them for their church. He also told them when he was there alone, through Wasyl Polushie as his interpreter, that it was his duty to procure them a priest of their own Greek Catholic rite and that he would do so at the earliest possible moment.

Spaczinski, page 23, l. 37 to page 24, l. 9; page 24, l. 9–20.

Bishop Legal, page 15, l. 40 to page 17, l. 22.

Petro Melnyk, page 36, l. 39–43; page 41, l. 22–35.

Michailo Polushie (Defendant), page 99, l. 12–18.

Wasyl Feniak (of Defendants' party), page 78, l. 24; page 80, l. 19–22; page 80, l. 36–41.

Fedor Melnyk (of Defendants' party), page 86, l. 40–47; page 90, l. 2–7.

Iwan Pylypiw (Defendant), page 106, l. 9–15.

Iwan Sachman (of Defendants' party), page 111, l. 9–11.

Wasyl Polushie (of Defendants' party), page 113, l. 3–10.
Michailo Melnyk (Defendant), page 137, l. 29 to page 138, l. 16.
Admission, page 90, l. 8–9.

(c) The third step in the progress towards forming a congregation was the second visit of Father Dmytrow during part of which, as before stated, he was accompanied by Bishop Legal. On this occasion the people commenced to get logs out of the woods for the construction of the church in question and Father Dmytrow accompanied them to the woods giving the sanction of his presence.

Spaczinski, page 24, l. 11–26; page 27, l. 15–22.
Petro Melnyk, page 42, l. 7–20.
Wasyl Feniak (of Defendants' party), page 79, l. 24–40; page 81, l. 12–23.
Michailo Polushie (Defendant), page 99, l. 19–25.
Iwan Pylypiw (Defendant), page 106, l. 7–22.

(d) The fourth step was the arrival of Reverend Father Tymkiewicz who was sent out by the Propaganda at Rome at the request of Bishop Legal in conformity with his promise to the people in the spring of 1897, to take charge of this Congregation then being formed. He was duly authorised by Bishop Legal, to whom, as in duty bound, he presented his credentials, to become the regular parish priest at Star. Everyone in the Congregation, without exception, was thoroughly satisfied with the service and ministrations of Father Tymkiewicz, who, according to all the witnesses, conducted the same services as that to which they had been accustomed in Galicia. He remained there as their settled parish priest for some five months or thereabouts and his services were regularly attended by the lay Defendants.

Spaczinski, page 24, l. 26–30; 33–43; page 25, l. 1–13.
Bishop Legal, page 17, l. 20–28.
Iwan Pylypiw (Defendant), page 106, l. 25–30.
Iwan Melnyk, page 32, l. 21–31.
Petro Melnyk, page 41, l. 38–42.
Wasyl Feniak, page 77.
Fedor Melnyk, page 90, l. 33–36.
Reverend Father Alexandroff, page 96, l. 28–36.
Wasyl Polushie, page 113, l. 2–4.

(e) After the departure of Father Tymkiewicz and before the arrival of Father Zacklynski, services such as could be conducted by a lay reader were continuously held by Nikolai Spaczinski and collections were taken up for the building of the church, accounts being kept and all entries made by Spaczinski.

Spaczinski, page 25, l. 8–12, l. 13–22.
Petro Melnyk, page 41, l. 10–12.
Iwan Pylypiw, page 107, l. 9–10.
Extracts from book Exhibit A, page 22, l. 21–39.

These services were regularly attended by the Defendants and all others of the Congregation and were held according to the rites of the Greek Catholic Church of Galicia, the same in all respects as the corresponding services in Galicia.

(f) Next came the calling of Father Zacklynski. The contract put in as Exhibit D is proven to have been signed by the three lay Defendants along with a number of other prominent members of the Congregation, and in response to the

sending of that contract with a letter to the Reverend Father Zacklynski, he came to this country from the United States.

Spaczinski, page 25, l. 12–32; page 29, l. 27–30; page 31, l. 4–13; page 31, l. 33–38.

Iwan Melnyk, page 32, l. 34 to page 33, l. 1.

Fedor Melnyk, page 87, l. 15–21.

Michailo Polushie, page 98, l. 9–12.

Petro Melnyk, page 37, l. 7–10.

Feniak, page 83, l. 5–10.

Pasemko, page 49, l. 36 to page 50, l. 1.

Pylypiw, Deposition on discovery, page 159, l. 27–36; Evidence, page 103, l. 27 to page 104, l. 5.

Wasyl Polushie, page 113, l. 29–36.

Michailo Melnyk, page 133, l. 25 to page 134, l. 41.

Scott, J., in his judgment holds the signing of contract Exhibit D by Defendants is satisfactorily proven. He therefore disregards their pretence of not having known what they were doing in signing the same.

(g) The ministry of Zacklynski up to the time when the dispute arose, in Deeember, 1900, met with the approval of all parties in the Congregation, Defendants and Plaintiffs alike. He conducted services exactly the same as those to which the people had been accustomed in their native country, Galicia, and the Defendants, as well as all the others of the Congregation, regularly attended his services.

Korchinski, page 156, l. 28–30.

Spaczinski, page 25, l. 32.

Admission, page 33, l. 3–9.

Michailo Romaniuk, page 49, l. 2–8.

Pasemko, page 50, l. 1–8.

Fedor Melnyk, page 90, l. 38–41.

Pylypiw, page 104, l. 38–41; page 107, l. 12–13.

(4)

Father Korchinski, priest of the Russian Orthodox Church, fully recognised the people of the Congregation in question as "Uniates." See Appeal Book, page 156, l. 1–20. Also page 156, l. 28 to page 158, l. 9.

Wasyl Feniak, page 82, l. 17–27; also l. 31–41.

Fedor Melnyk, page 89, l. 19–24.

Michailo Polushie, page 98, l. 26–36.

Iwan Pylypiw, page 107, l. 31–41.

Polushie and Pylypiw are two of the Defendants. Feniak and Melnyk are among the strongest adherents of the Defendants' party.

(5)

Had the Defendants and those who sided with them, or any of them, at any time during the interval between the first visit of Father Dmytrow and the 27th

day of January, 1901, joined the Russian Orthodox Church ? It had never been pretended for a moment that the Plaintiffs or those siding with them ever did so. Throughout the whole evidence of the defence until Feniak, Fedor Melnyk, and others were called, as an afterthought, on the 18th day of July, 1903, it was clearly conceded that none of the Defendants or their party ever did join the Russian Orthodox Church until after they had their interview with Father Korchinski on the 27th day of January, 1901 ; to this statement the Defendant Michailo Melnyk is an exception. The Plaintiffs contend that the evidence called on the 18th day of July is entirely unworthy of credence from the circumstances under which it was given and the fact that it repudiates in effect the story they formerly told, as well as the evidence of Father Alexandroff.

Korchinski. Deposition, page 156, l. 39–42 ; page 157, l. 14–21 ; Evidence, page 52, l. 7–15 ; page 52, l. 44, to page 53, l. 3, and l. 6–20 ; page 63, l. 36 to page 64, line 5.

Feniak, page 80, l. 26–30 ; page 80, l. 6, and l. 18–19.

Fedor Melnyk, page 90, l. 25–26, and 41–43 ; p. 90, l. 44, to page 91, l. 6.

Father Alexandroff, page 92, l. 45, to page 93, l. 8 ; page 93, l. 20–25 ; page 94, l. 11–16 ; page 95, l. 43 to page 96, l. 5,

M. Polushie (Defendant), page 97, l. 41.

Iwan Pylypiw (Defendant), page 101, l. 16–18 ; page 106, l. 22–28.

Others, not parties to this suit and not members of this Congregation, who had been until then Uniates did actually join the Russian Orthodox Church at the time of Father Alexandroff's and Father Kamneff's first visit. Among these were Sachman and Lakusta, both of whom with some others, Uniates, have since continued firm adherents of that Church. There is nothing to show that Michailo Melnyk, the one member of this Congregation who was received into the Orthodox Church at that time, ceased in any way to regularly attend and participate in the Uniate services both of Dmytrow, Tymkiewicz, Spaczinski and Zacklynski.

See Sachmann, page 110, l. 20–23 ; page 111, l. 8–9 ; page 111, l. 31–33.

Lakusta, page 117, l. 1–8 ; page 118, l. 21 to page 119, l. 4.

Michailo Melnyk, page 130, l. 5–15 ; page 130, l. 22–26.

(6)

The fact that so far as the evidence of Father Alexandroff shows and as their own evidence admits, none of the lay Defendants or their adherents took communion or confessed at the services of Kamneff and Alexandroff in 1897, may be regarded as proof that they believed Alexandroff and Kamneff to be of a different Church from theirs or were at least in doubt about it, and the fact that from that time forth none of them ever attended any subsequent services of Alexandroff or came into contact with him in any way, goes to show that they had never joined the Orthodox Church or had any further connection with its priests than merely that of once attending their services.

Alexandroff, page 96, l. 28–29, and l. 36–38.

Pylypiw, page 103, l. 25–27.

(7)

In recognising Alexandroff and Kamneff as far as they did what was the real

belief of those of the Star Congregation who attended the services ? Did they really understand that these priests came from Russia and were priests of the Church which they had always been taught to call schismatic, or were they under the delusion that Alexandroff and Kamneff were priests of their own Church with the same religion as they were, advocating that here in America the Uniates should hold themselves free from the control of the Pope ? There is strong ground for believing the second to be the case and a considerable reason to believe that Father Alexandroff deliberately misled them by the intentional use of the words " Rusyn " and " Ruski."

Father Filas, page 45, l. 37–42.

Feniak, page 77, l. 15–19 ; page 77, l. 29–30 ; page 79, l. 24–33 ; page 80, l. 32 to page 81, l. 5.

Fedor Melnyk, page 90, l. 11–12, and 24–29.

Father Alexandroff, page 92, l. 31–34 ; page 95, l. 16–20 ; page 95, l. 41–43.

Michailo Polushie, page 95, l. 16–21.

Pylypiw, page 106, l. 30–31.

Sachmann, page 110, l. 34 to page 111, l. 14 ; page 111, l. 26–33.

Wasyl Polushie, page 114, l. 21–26.

(8)

It is perfectly clear from the evidence that even if any of the Star Congregation had a desire to join the Church of Fathers Alexandroff and Kamneff in the summer of 1897, it ended with the first visit of those priests, and it seems to have been clearly recognised both by the Star people and by Father Alexandroff himself, that from that time forward they had nothing in common.

Feniak, page 77, l. 43 to page 78, l. 4 ; page 80, l. 27–30 ; page 82, l. 1–6.

Fedor Melnyk, page 90, l. 16–19.

Father Alexandroff, page 93, l. 10–16 ; page 95, l. 43 to page 96, l. 14 ; page 96, l. 28–33 ; page 97, l. 13–18.

M. Polushie, page 99, l. 23–26.

Iwan Pylypiw, page 104, l. 39 ; page 106, l. 24–25 ; page 107, l. 9–12.

If all that Defendants have proved regarding members of the Star Congregation going to the Russian Orthodox Church in 1897 be true, it does not in the least affect the fidelity of the Plaintiffs and the whole of Plaintiffs' party to the Uniate faith. Defendants accuse only two of the Plaintiffs' party, being Petro Melnyk and Spaczinski, of having wavered in their allegiance to the Uniate Church and they both deny it.

(9)

Apart from the oral evidence and the conclusions drawn therefrom that notwithstanding the intervention of Fathers Kamneff and Alexandroff, Orthodox priests, in 1897, the Star Congregation continued throughout in connection with the Uniate Church ; Plaintiffs have most valuable proof of this fact in the book kept by Spaczinski with regard to the financial affairs of the Congregation. Portions of the entries made and entered in the minutes as correct show conclusively that from first to last the Congregation belonged to the Uniate faith

and that the Defendants were active and prominent members of the Congregation. Not the faintest reference is made to the various visits of Fathers Alexandroff and Kamneff, nor are the names of Halkow, Sowko, Sachman, Lakusta or the Nymyrskis ever mentioned after the very first visit of Father Dmytrow. This fits in exactly with Plaintiffs' contention that these men joined the Russian Orthodox Church in 1897 and ever afterwards had no connection with the Star Congregation. This book corroborates the evidence already commented upon as to the sequence of events in the history of the Congregation therein stated. The evidence bearing upon the keeping of this book is as follows :—

Spaczinski, page 20, l. 27, to page 23, l. 4 ; page 20, l. 32–34.
Polushie, page 98, l. 36–41.
Wasyl Polushie, page 113, l. 10–13.
Michailo Melnyk, page 131, l. 36–39 ; page 133, l. 1–16 ; page 139, l. 26–32.

(10)

Strike out from consideration every fact which antedates the arrival of Zacklynski and the consecration of the church, which may fairly be considered the starting point of the Congregation as such. Not one of the Defendants' party ever made a complaint against Zacklynski until the money difficulties arose in December. It was admittedly a united Congregation. The list of the Congregation in evidence, Exhibit C, contains a number of names very closely corresponding with the promised number of congregation as stated in the contract sent to Zacklynski. The highest number of members that Defendants have been able to show as having joined Father Korchinski, previous to the action, is that given by Iwan Pylypiw on page 107, l. 47 to page 108, l. 5, numbering 14.

Wasyl Polushie says that on the list, which he took after the invitation to Korchinski to be their priest, there were forty names. He admits that twenty or twenty-five of those did not appear in the list Exhibit C and therefore were not members of the Star Congregation. It is clear from this that the overwhelming balance of the congregation has continuously remained Uniate. In this view what difference does it make whether the fourteen or fifteen comprising Defendants' party had or had not previously been imbued with hatred of Rome and really honestly believed that Father Zacklynski and his followers were going over to Rome ? That may offer some excuse for their conduct but it cannot empower them to hand over their church to another body. There is no proof that the bulk of the Congregation ever heard of Zacklynski going over to Rome.

(11)

Plaintiffs, however, contend that the whole story about any of the members of this Church going over to the Russian Church under Fathers Alexandroff and Kamneff in 1897, is a carefully planned and thought out fabrication and if it were true that one or more of them, under the influence of excitement, did join Father Alexandroff, they took a second thought and entirely abandoned the idea. What the Defendants have done is to attribute to themselves and those of their party the course of action which actually was taken by other people not

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members of the Congregation at Star who unquestionably did in 1897 go over to the Russian Orthodox Church and have remained in that Church ever since, these people being :—Iwan Lakusta, Iwan Sachmann, Iwan Halkow, Iwan Sawko and the brothers Nymyrski, Konstantin and Theodor, Rudyk, Maceborski, Czornij and Cziczak.

As to this point see evidence of Sachmann, Lakusta and Michael Melnyk cited under head V. (5) of this factum.

Spaczinski, page 24, l. 9–20.

In order to show that the whole story is a fabrication here are some very telling questions :—Why did they not say to Father Korchinski when at the meeting of January 27th, 1901, he told them that they must renounce their Romish errors. " Why should you want us to renounce ? We all renounced before in 1897 before " Father Kamneff." Again, why did they not, when fresh from their renunciation before Father Kamneff, object to the presence of Bishop Legal in his canonicals at Father Dmytrow's services ? Here, too, at page 49, l. 26–31, is a very material statement made by Pavlo Pasemko as to the words used to him by the Defendants when they asked him to join the Congregation at Star. This statement the Defendants have not pretended to deny, and the terms applied by them to the Russian Orthodox Church show that they were then strongly opposed to said Church. Towards the close of the trial the Defendants' witnesses all had a story to tell with regard to their being compelled in Galicia to profess allegiance to the Pope ; that they had to join in singing the Uniate Creed ; that on reaching Canada they were in a free country and there was an end to " must." All of this sounds very much like a lesson learned for the occasion. The facts show no grounds for such a state of feeling on their part. All three Defendants with Feniak and the other Melnyks, as well as many of Plaintiffs' party, came from the two villages of Nybylu and Pyryhinsko, in neither of which was there any Roman Catholic Church, nor were they ever interfered with in their lives by any Roman Catholic bishop or priest. They were fully aware that the Pope was the head of their Church, and knew full well that in the absence of a Greek Catholic bishop a Roman Catholic bishop was the next best thing and that his advice was to be asked. Hence they received in silence the announcement that he had taken steps to act, and raised no objection until their own priest, Father Tymkiewicz, told them that it was wrong to have their church lands vested in the Roman Catholic bishop's name. The so-called objection to having to do with Rome never existed in their minds. What they did object to, after Fathers Dmytrow and Tymkiewicz suggested it, was that the clergy of the Latin rite should hold their land and have control over their church, clearly against the rule of the Roman Catholic Church as to the lands of Greek Catholic churches. See evidence of Legal, Zoldak and Filas. It was entirely a new question to them. Bishop Legal made a mistake in taking the title in the name of the Roman Catholic Episcopal Corporation, possibly because he had not informed himself as to the point, but evidently with no improper intention as to the Greek Catholics, as at the very time he took the land in the name of the Roman Catholic Corporation he sent to the Propaganda for a Greek Catholic priest. The change in the title, requested by Father Tymkiewicz, was consented to most willingly. If the people of themselves hated and feared Rome why these facts :—

Why did Iwan Lakusta in Galicia go occasionally to pray to a Roman Catholic Church instead of his own ? Why did people in Star generally attend all of the services held by Bishop Legal ? Why did Feniak have a Roman Catholic priest baptise his child and have the same child buried in the Roman Catholic cemetery ?

Lakusta, page 119, l. 15–30.
Feniak, page 81, l. 23–29.
Why did they write to Lemberg for a priest ?
M. Melnyk, page 133, l. 27–29.
~~An English translation is Exhibit E, page 217.~~

(12)

(English translation E, page 154)

The contract Exhibit D being of great importance as proving the written admission of the Defendants that they were at its date Uniates, due proof of its execution is important. The evidence bearing upon this point is as follows :—

Michailo Polushie, Defendant, in his deposition on discovery said as follows :—

" I remember being present with Iwan Pylypiw and Michailo Melnyk (the other " Defendant) when a paper was signed by him. They were sitting around a table " and told me to put my mark to it. Stephura was there also. Stephura wrote a " paper. I don't know if that was the paper I signed. It was in Michailo Melnyk's " house. He wrote it on the table. I did not see more than one paper. Michailo " Melnyk, Fedor Melnyk, Wasyl Polushie were also there. I did not hear the paper " read. I did not hear them talking about what was to go in the paper. I don't " know what was in the paper. The paper was to go to Zacklynski. It was a " letter to him asking him to come and sending him $60 to buy some church " property."

On the trial this Witness was asked nothing on this question.

Spaczinski on page 25, l. 22, says :—

" I saw it signed by Defendants, Pylypiw, Melnyk and Polushie and by all the " others whose names appear thereon."

Pylypiw in his deposition on discovery says :—

" This paper shown to me and marked ' A ' for identification was signed by " me. The first signature is mine. Carpiec and Petro Stephura wrote it in Iwan " Danczuk's house. It was read but I don't know if it was read as it was written. " Carpiec and Spaczinski were sitting at a table and Carpiec read it. The reason " I say it may have been read different from the way it was written is that they " have fooled me before on that religion. There were about fifty people there. " Spaczinski went around for a week getting the people to come together to write for " the priest. Spaczinski and Carpiec were talking over what should go in the letter " and we were listening. Some were agreed to send the letter and some were " kicking. Some signed and some not."

On the trial, Appeal Book, pages 103 and 104, this Witness gives a totally different account of the matter.

Michailo Melnyk, page 134, l. 7.

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—*continued.*

Note.—It seems strange that nearly all the signers of this Contract D belong to the Defendants' party. Spaczinski is the only leading man on the Plaintiffs' side of this suit who signed it.

(13)

The evidence showing that the services held in the church at Star or in the Congregation before the erection of the church by Fathers Dmytrow, Tymkiewicz and Zacklynski, as well as the services conducted by Spaczinski, as lay reader, were the same as those which these people had been accustomed to hear at home in Galicia, is as follows :—

Spaczinski, on page 20, l. 23–27 :—

"The Mass then sung was the same Mass as I had been accustomed to sing "in Galicia."

On page 24, l. 33–41 ;—

"The services were just the same as those I had been accustomed to hear in "Galicia."

Again on page 27, l. 8–13 :—

"There was no difference in the service held by Zacklynski and Tymkiewicz."

Iwan Melnyk, on page 32, l. 29–30 :—

"Father Tymkiewicz held the same services as I used to hear in Galicia."

Again on page 34, l. 25–27, he says :—

"The services held by Father Zacklynski were the same as those I had "attended in Galicia."

Petro Melnyk says, on page 36, l. 24–28 :—

"Father Dmytrow, Tymkiewicz and Zacklynski's services were the same as "those we had in Galicia."

Wasyl Feniak (of Defendants' party) says, page 79, l. 38–39 :—

"The services held here by Father Dmytrow were the same as those I had been "accustomed to in Galicia. I can say the same of those held by Father Tymkie-"wicz and Father Zacklynski."

Again he says on page 79, l. 10–11 :—

"In the prayer in our Church where the word 'Orthodox' occurs there is "a prayer for the Pope of Rome."

Fedor Melnyk, on page 89, l. 45 to page 90, l. 2, says :—

"The services appeared to be the same as in the old country."

Michailo Polushie (Defendant), page 99, l. 6–10, speaking of Father Dmytrow says :—

"I did not see any difference between his services and those I had been "accustomed to at home."

Iwan Pylypiw on page 108, l. 14–15, says :—

"I used to hear in our services a prayer for the Pope."

Father Zoldak, page 12, l. 43–47 ; page 14, l. 26–29.

Father Filas, page 46, l. 39–44.

(14)

There is a great deal of evidence on the part of the defence to show that Father Dmytrow, Tymkiewicz and Zacklynski all three called themselves " Greek Catholic " Orthodox priests." This as already stated is a distinct contradiction of terms, as the same Church cannot be both " Catholic " and " Orthodox." The word " Orthodox " used in the Ruthenian language is " Pravo-Slavni " and on cross-examination each and every one of these witnesses appear to have admitted that their reason for thinking that their Church was Orthodox is that the words " Ortho- " dox Christians " is introduced in a certain passage in the Mass. Exactly the same words " Orthodox Christians " are used in the Roman Catholic Mass, yet no one will pretend that the Roman Catholics are Orthodox. To the ignorant Galician peasant the word " Pravo-Slavni," which means literally " distinguished " believer," or " excellent believer," is a term equivalent to " the true Church," and the words " Orthodox Christians " they understand to mean Christians who belong to the true Church. The distinction must be clearly drawn between the word " Orthodox " used as a descriptive adjective both in the Roman Catholic missals and in the Greek Catholic missals, and the same word " Orthodox " used as a definite name for a Church in the limited sense of contra-distinguishing that Church from a Catholic Church. In the first sense of the word " Orthodox " the Presbyterian and Dissenting Churches are Orthodox and in the merely adjectival sense of the word " Catholic," they are also " Catholic," but in the applied sense of " Orthodox " and " Catholic " as distinctive names, no Protestant Church can be either the one or the other.

No one of the Defendants' witnesses ventures to give any other explanation as to why they believed their Church in Galicia to be " Orthodox," further than the mere fact that the people are called " Orthodox " in the prayer for the Pope.

See Exhibit Q, page 165.
M. Melnyk, page 139, l. 35–39.
Feniak, page 80, l. 3–6.
Pylypiw, page 108, l. 18–20.
Sachmann, page 110, l. 34–39.
Lakusta, page 120, l. 18–27.

(15)

To prove that the words the " Greek Catholic Church " is the official name of the religious body in whose favour Scott, J. has given his judgment, and that the " Russian Orthodox Church," while it may be entitled to describe itself as " Catholic," has never used and does not use the title " Greek Catholic," I cite the following evidence in addition to the preceding authorities quoted from the " Encyclopaedia " Britannica." It will be noted that several of Defendants' witnesses while insisting that the church was in reality " Orthodox " still admit that the name of it was " Greek Catholic."

Korchinski.
Deposition on discovery.
Page 155, l. 30–33, l. 23–27 ; page 220, l. 23 ; page 221, l. 1–7.
Evidence, page 75, l. 35 to l. 2, page 76 ; page 76, l. 11–14 ; page 59, l. 32 to end ; page 64, l. 17–18.

Zoldak, page 9, l. 32–33 ; l. 37–38 ; page 10, l. 38 ; page 12, l. 12–13 ; l. 31 ; page 13, l. 10–12 ; page 13, l. 32–33.

Bishop Legal, page 15, l. 10–15 ; page 18, l. 24–27.

Szpaczinski, page 20, l. 4–5 ; page 31, l. 21–23.

Korchinski (Defendant), page 156, l. 3, 7, 9 ; page 57, l. 29–31.

Iwan Melnyk, page 32, l. 19 ; page 39, l. 33.

Iwan Workun, page 42, l. 22–23 ; page 43, l. 9–24.

M. Cziczak, page 44, l. 21–29.

Iwan Hluszak, page 45, l. 10–19.

Rev. Father Filas, page 45, l. 30–31 ; page 46, l. 24–25.

M. Romaniuk, page 48, l. 37, 38, 41.

Pavlo Pasemko, page 49, l. 19–20, 26–29 ; page 50, l. 26–27 ; page 50, l. 35.

Wasyl Feniak (of Defendants' party), page 80, l. 1–3.

M. Polushie, page 99, l. 28–30.

Iwan Lakusta, page 120, l. 13–17.

M. Melnyk, page 136, l. 39–40.

Iwan Pylypiw, in his deposition on discovery states what Father Tymkiewicz called the Church, when applying for the title. It is only the natural presumption that in obtaining title he should give the proper and official name of his own Church. The words are—" The priest said ' Greek Catholic Church ' when " talking in the Land Titles Office." Page 160, l. 19–25.

M. Melnyk, page 136, l. 39–40.

Deposition of Father Zacklynski, page 148, l. 29–30.

(16)

The Defendants claim that being " Greek Catholic Orthodox " they have a right to pass over the word " Orthodox," and call themselves " Greek Catholics," and so hold under the certificate of title. Plaintiffs contend that Defendants belong to what is generally called and officially known by itself as the " Russian " Orthodox Church " and that even granting that they are " Greek " in rite and " Catholic " according to their own conception of that term, that Church has never used and has no right to use as a name the words " Greek Catholic." Since the inception of this suit they have adopted a long composite name into which the words " Greek Catholic " are inserted, but the presence of the other words accompanying them makes it a different name. Plaintiffs contend that this name is a fabrication for the purposes of this suit and that not one example of its use in any work or document has ever been shown or can ever be shown. They do not contend that their name is " Greek Catholic " pure and simple, but " Greek " Catholic " with a number of other words added. The only church existing in the world which uses and always has used as its official name the plain, simple words " Greek Catholic " is the " Greek Catholic Church of Galicia." Father Alexandroff describes himself as a priest of the " Greek Catholic Orthodox Church." Again as a missionary of the " Greek Catholic Church," or in this instance of the " Russian Greek Catholic Orthodox Church." Again—" the common, standing " name of my Church, both canonically and generically, is the ' Greek Catholic " ' Church.' It is generally known by that name in America. It is also called

" the ' Greek Catholic Orthodox Church.' The Russians call it the ' Russian " ' Greek Catholic Church.' In my letter Exhibit M, I speak of my Church as " the ' Russian Orthodox Church.' " He says that he cannot be sure how the name of his Church is given in his certificate of ordination and cannot swear that the word " Catholic " appears in it. He says again " I am only a priest of the " ' Greek Catholic Orthodox Church ' in the sense that I believe the ' Russian " ' Orthodox Church ' to be the ' Greek Catholic Church.' Again—" On my " visiting card in evidence, I style myself ' Missionary of the Graeco-Russian " ' Orthodox Church.' " Lastly he admits that he cannot remember any book in which his Church is called the " Greek Catholic Orthodox Church."

Page 91, l. 31–32; page 92, l. 31–33; page 93, l. 34–39; page 163, Exhibit M; page 93, l. 44 to page 94, l. 2; page 95, l. 23–34; page 96, l. 25–26.

Reverend Father Korchinski calls himself a priest of the " Orthodox Greek " Catholic Church " or the " Orthodox Russo-Greek Catholic Church." Then again of the " Orthodox Russo-Greek Church " (the word " Catholic " being forgotten). Then again the " Orthodox Greek Catholic." Then again " Our " National Russian Church." Then again " The Russian Church," that is the " Orthodox Church." Then again the " Orthodox Russo-Greek Church " (the word " Catholic " again forgotten). Again inadvertently in speaking of the Archbishop of Lemberg, he uses the word " Greek Catholic Archbishop." Official name is " Orthodox Russo-Greek Catholic Church." Again he calls it the " Orthodox Graeco-Russian Church " (the word " Catholic " again forgotten). On being asked to show extracts in any of his books to show that the name he claimed for the Church was the real name, he utterly failed to do so, and the only extracts to which he pointed style his Church as follows:—" All dogmas of the " ' Orthodox Church.'—Do you wish to unite with the ' Orthodox Greek Russian " ' Church.'—Do you wish to be in union with the ' Orthodox Catholic ' faith." (This is the only place where the word " Catholic " is used, and it is used as an adjective descriptive of the faith, not as a name for the Church.) " Thy servant " who is worthy to come to the Holy Orthodox Church." He changed his base again as to the name quite a number of times. Calls it the " Orthodox Russo-Greek Church," " The Greek Orthodox Church," " The Orthodox Russo-Greek " Russian Church," " The Holy Eastern Church," " The Orthodox Graeco- " Church." " The Graeco-Russian Church," " The Orthodox Russian Greek " Church."

Page 51, l. 18–19; page 51, l. 23–24; page 55, l. 37–40; page 56, l. 5; 13–15; page 56, l. 27; page 57, l. 31; page 60, l. 4; page 60, l. 16–20; l. 29–43; page 61, l. 34–38.

Note.—Until the schism the divisions of the Christian Church were geographically speaking " Western " and " Eastern," but both alike called themselves " Catholic." Neither one used the name " Catholic " but only the adjective " Catholic " as descriptive. The whole Christian world being Catholic there was no need to use the name. The distinction between the two Churches was geographical and lingual—the " Western " or " Latin Church," the " Eastern " or " Greek Church." Both Churches had used and still used the words " Catholic " and " Orthodox " in their generic adjective sense, but after the schism the " Western Church " adopted the adjective " Catholic " as its official distinction,

prefixing the word " Holy "—" The Holy Catholic Church." This is well known as the name given by the Church of Rome to itself. It is only outsiders who call it " Roman." In the spirit of opposition the " Eastern Church," in order to distinguish itself from the " Western," adopted the adjective " Orthodox " as its distinguishing appellation, also prefixing the word " Holy," so that this Church has, from the days of the schism, called itself officially " The Holy Orthodox " Church," the words " Greek," " Russian," " Catholic," and so on, being used simply for descriptive purposes, but being no part of the name. The word " Greek " was used by outsiders just like the word " Roman." Since the days of the schism the distinctive and never omitted name of all Churches in allegiance to the Pope has been " Catholic " and that of nearly all Churches refusing such allegiance has been " Orthodox." The names " Roman," " Latin," " Ruthenian," " Greek," " Bulgarian," " Coptic," &c., are names used or formed for the purpose of distinguishing the National Churches, and the true name of each and every one of these Churches is Catholics of the " Latin," " Greek," " Ruthenian," &c., rite. To deny any of these comments is to ignore the earliest facts of history.

In the " Encyclopaedia Britannica," Vol. 4, page 516, under title " Bulgaria," the writer says :—

" The people belong to the Greek Church—are nominally members of the " Greek Church."

In another article on Roumania, Vol. 21, page 15, of the same book, the writer says :—

" About four and a half millions of the population belong to the Roumanian " branch of the Orthodox Greek Church."

In an article on the Copts, " Encyclopaedia Britannica," Vol. 6, page 354, they say :—

" There are 5,000 Roman Catholics and as many of the Greek faith."

In not one of these articles, which are standard authorities on the subject, is the word " Catholic " ever used as applicable to any of the Churches of these countries whose faith is identical with that of the Russian Orthodox Church. If the name " Greek Catholic " has ever been applied to the Greek Church not under Rome it has only been done so by people who have not taken the trouble to inform themselves properly on the subject, the best proof of which contention is that the only authority which the Defendants could give for the use of the term was one citation from an American Encyclopaedia, in which the name " Greek Catholic " is mentioned incidentally as a name sometimes used for the Greek Orthodox Church.

(17)

What does the surrender of the homestead entry, obtained in the name of the Roman Catholic Episcopal Corporation of St. Albert, and the substitution of a new entry in the names of the three Defendants, as Trustees, signify. Frankly it is admitted that after Father Tymkiewicz pointed out to them that the title should not be held by a Roman Catholic bishop, the Congregation were a unit in objecting to its being so held. Does this show (a)—as contended for by Defendants that in all things they were opposed to the Roman Catholic Church and therefore could never have been Uniates at all, or (b)—only that having no bishop of their own

who could legally hold their land for them they objected to having it held by a Roman Catholic bishop whose control over them was only special and temporary.

To believe the first contention would be to disregard entirely the whole mass of evidence for the Plaintiffs. To believe the second is fully in accord with what Bishop Legal and Fathers Zoldak and Filas said regarding the rule of the Church. Bishop Legal admittedly made a mistake in making the homestead entry as he did, and so evident was the mistake that on Father Tymkiewicz calling attention to it, the ecclesiastic who was acting for the bishop in his absence at once yielded and permitted the entry to be changed. It is strongly contended by the Defendants that the people from the very earliest moment objected to the Roman Catholic bishop having the land in the name of his Episcopal Corporation, but the evidence does not bear out this contention. The people did not think of objecting till after Father Tymkiewicz pointed out the error.

See evidence of Bishop Legal, page 16, l. 28–36, and page 17, l. 7–12.

Spaczinski, page 23, l. 43 to page 24, l. 1–9; page 24, l. 11–26; page 27, l. 39 to page 28, l. 7; page 28, l. 9–20; 27–29; 33–34; page 30, l. 42–46.

Petro Melnyk, page 37, l. 2–5.

Fedor Melnyk, page 86, l. 45 to page 87, l. 9.

Pylypiw, page 108, l. 35.

Michailo Melnyk, page 132, l. 22–28.

Feniak, page 79, l. 11–13.

Exhibit 1, page 165.

Exactly in the same line and of the same limited effect are the proven sayings of Dmytrow, Tymkiewicz and Zacklynski as to not taking anything from the bishop. In order to believe the Defendants' contention as to the force and effect of this change of title and these utterances of these three priests it is necessary to ignore entirely the weight and effect of the whole mass of facts, not utterances, but actual facts, in the Case, whereas to hold the Plaintiffs' contention as to their force and effect as correct, is entirely in line with and consistent with the whole facts.

(18)

In connection with the dissension which arose in the Congregation and proceeded until the invitation by the Defendants and four others to Father Korchinski to act as priest over the Congregation, a great deal of evidence was given as to a certain oath which Father Zacklynski, on the 13th of December at a meeting, where he appointed a business committee or "provisors" for the business affairs of the Congregation, requested said provisors to swear, and it was strenuously contended by the Defendants that he wished them to swear absolute and unquestioning obedience to him, with the intention of being in a position to compel them by their oaths to follow him into the Church of Rome. The evidence given by the defence to support this contention is very slight and is unreasonable, even absurd. For example, Witness Feniak says:—"You have to swear that you will "do whatever I tell you to do."

Page 79, l. 8–12.

Fedor Melnyk says :—

" They should swear to do as he told them to do."

Page 88, l. 38-42.

M. Polushie says :—

" He did not say what he wanted them to swear to. He did not tell them " what it was they were to swear."

Page 98, l. 14 to 19.

The evidence was given in rebuttal on behalf of the Plaintiffs to the effect that he requested the provisors to swear that they would remain in all things true to the Greek Catholic faith and never go over either to the Roman Catholic Church on the one hand, or the Russian Orthodox Church on the other.

Note.—This oath would have been a perfectly proper and fitting one at this juncture.

Senatowicz, page 151, l. 6-12.

Petro Melnyk, page 152, l. 2-5.

Szpaczinski, page 152, l. 28-32.

Pasemko, page 152, l. 36 to page 153, l. 2.

Iwan Melnyk, page 153, l. 5-7.

In the spring of 1897 Fathers Kamneff and Alexandroff of the Russian Orthodox Church had made an attack on the ranks of the Uniates and captured Halkow, Sawko, Lakusta, Rudyk, the two Nymyrskis, Maceborski, Sachmann, Oleksa Chorney, Stefan Cziczak and some others, who ceased to attend the Uniate services and had unquestionably gone over to the Russian Orthodox.

On the other hand there had been a slight difficulty over the question of the title and it had been rescued from the Roman Catholic bishop. At this stage another danger was to be apprehended from the Russian Orthodox Church, as for the first time a regularly settled priest of that faith had arrived and was holding services with regularity at the neighbouring settlement of Wostok.

(19)

Another question, perhaps of no great importance, but which still occupied considerable time at the trial, was whether Zacklynski had really announced that he had left the Congregation, thus, on the contention of the Defendants, justifying their action in calling a new priest. As to this it must be noted that the Plaintiffs' evidence shows that the utmost Father Zacklynski ever said to the people, was that if they did not manage to pay his stipend, fixed by agreement, with more regularity, he would not be able to live and would be finally forced to leave them as a matter of self-preservation. It is to be noted also, that as a matter of fact, he did not leave Star but was away at the other parts of his mission, Rabbit Hills and Beaver Lake, as it was his right and duty to be. It seems incredible that the Defendants did not well know this. Again it is a very suspicious circumstance that all his announcements of leaving should have been made only to the Trustees in private. A similar matter, raised by the Defendants and proven only by their statements as to what Father Zacklynski said to them in private, and therefore statements which Plaintiffs had no means of rebutting, as Zacklynski had permanently left the N.W.T. before the trial commenced, was

the accusation against him that he urged the Trustees to borrow money from the French bishop and so by mortgage put the Star church into his hands. The evidence is extremely suspicious on the ground of its being impossible to contradict the same, and if the Plaintiffs' witnesses are to be believed as to what the oath was to be administered to the provisors, there can be no question that Father Zacklynski was as much opposed to coming under direct control of the Roman Catholic bishop as were his flock.

(20)

The evidence enables us to trace accurately and reliably the facts which led to the strange conduct of the Defendants and which culminated in this suit.

A. Up to some day in December, about the eighteenth but not to be fixed exactly, everything had gone smoothly, and the Congregation was a unit in maintaining firmly the Uniate faith, accompanied however by a strong objection to being directly controlled by the bishop of the Latin rite with regard to their property and finances. Some difficulty appears to have arisen over money matters, it is not very clear however just what. Apparently Father Zacklynski, on information received, had been accusing the Trustees of being short in their cash, and they retaliated by charging him with keeping church moneys received for other purposes.

See evidence of—

Szpaczinski, page 25, l. 37–44 ; and Admission, l. 41–43 ; page 29, l. 12–18.
Iwan Melnyk, page 35, l. 12–37.
Petro Melnyk, page 40, l. 19–32.
Pavlo Pasemko, page 50, l. 4–12.
Wasyl Feniak, page 78, l. 41–42.
Michailo Polushie, page 100, l. 12–15.
Iwan Pylypiw, page 105, l. 25–31.
M. Melnyk, page 139, l. 24–25.

B. When these difficulties arose, Zacklynski evidently having no special ill-will against the Defendants did not seek to remove them from the trusteeship of the land, but decided to appoint a business committee of twelve men, out of whom three should be selected to be what he called provisors or overseers, a very proper and business-like step. To show further that he had no bias against the Defendants or their party, he named one of the Defendants, Michailo Melnyk and Feniak on this committee, and Michailo Melnyk as one of the chosen three, the other two of the three being the Plaintiff Pasemko and one Michailo Podruski, he being nominated treasurer. Despite the unpleasantness over the refusal of the new provisors to take any oath, the new board went into office without any opposition and the Church moneys and the key of the church were handed over to these three new provisors and remained in their hands until the evening of January 27th, 1901. On that evening, under circumstances which both sides recount in different ways, the three Defendants took back from Podruski and Pasemko the box containing the Church moneys and the key of the church, and accompanied by the Plaintiff, Petro Melnyk, who at that time anticipated no such move as an invitation to a priest of another Church, they took the box and the key to the house of Fedor Melnyk, and then later in the evening invited Father Kor-

chinski to meet them at Fedor Melnyk's house. It is quite evident that they took the box, key, &c., for the express purpose of putting themselves in a position to hand over the Church to Father Korchinski. What transpired at that meeting fills a very large portion of the minutes, but the gist of it all was that seven men alone out of the Congregation, at that meeting, requested Korchinski to become priest over the Congregation and represented to him that they were men of such influence that if they went over to him all of the Congregation would quickly follow. Finding later that with all their efforts fourteen or fifteen was the sum total of the adherents they could muster, they found themselves in the position of either having to let the suit go by default or of concocting a defence. The most taking and most plausible story they could concoct, in order to turn the rest of the people against Zacklynski, was that he had made propositions to hand the church over to the Roman Catholic bishop.

Szpaczinski, page 26, l. 1–3.
Iwan Melnyk, page 33, l. 14–31.
Petro Melnyk, page 37, l. 11–39.
Pavlo Pasemko, page 50, l. 8–11.
Wasyl Feniak, page 83, l. 43–46.
Fedor Melnyk, page 89, l. 6–15.
Pylypiw, page 107, l. 17–19.
Polushie, pages 114 and 115.
Michailo Melnyk, page 139, l. 15–23.

(21)

The closing of the church by this handful against the whole bulk of the Congregation and against the Greek Catholic clergy and the invitation to a priest of the Schismatic Russian Church to officiate in their church, was a piece of colossal impertinence. They professed to speak for and in the name of the whole Congregation without the slightest authority. They consulted no one, called no meeting and only made a canvass of the Congregation to find what adherents they could secure, after the acts complained of were done.

(22)

It is contended by Defendants that the church at Star was built as an Orthodox church under the advice and by the wish of Fathers Kamneff and Alexandroff as also was that at Wostok. The unquestionable facts are that immediately after holding their first services at Star in the summer of '97 Father Alexandroff when in Edmonton, on his way home, made entry for the lands on which the Russian Orthodox Church at Wostok now stands, and also that he did not at the same time enter for or apparently think of entering for the lands on which the church in question stands.

See his evidence, page 96, l. 10 to 18.

I contend this to be conclusive proof from his own lips that he had at that time no intention of taking any part in the erection of the church at Star.

Irrespective of what afterwards transpired, when Father Tymkiewicz pointed

out the impropriety of having the entry for the church lands at Star in the name of the Roman Catholic bishop, it is clear and undenied that the people of the Star Congregation, and especially the Defendants, requested Bishop Legal to secure land for them for a church, specifying the particular lot which they had already selected and had used as a cemetery. That Bishop Legal did obtain homestead entry therefor and reported to them at a later meeting, to their expressed satisfaction, that he had taken steps to secure the land. The land was consecrated by Father Dmytrow, a Uniate priest. The church was formally opened and consecrated by Father Zacklynski, a Uniate priest. Father Alexandroff, during his subsequent visits to the district, never came near the people at Star or inquired as to the progress of the church in any way. So far as the Star church and its progress were concerned Alexandroff was as far away from it as if he had been in Russia, although he was actually, in the body, only six miles away. Furthermore, Alexandroff states, and there is no contradiction, that the Russian Orthodox bishop furnished part of the funds for the erection of the church at Wostok, but that he never heard of the bishop having been asked to contribute to the erection of the church in question. Is not this a very striking proof that while the Russian Orthodox Church was being built at Wostok assisted by the bishop, the church in question was being built at Star by people other than the Russian Orthodox Church, otherwise why such partiality on the part of the bishop or extreme modesty on the part of the Star people ?

It has already been pointed out, in this factum, that the site of the church at Star had already been selected previous to the first arrival of Father Dmytrow, and there is not one word of evidence to the effect that this fact was ever mentioned to Father Alexandroff, who gives his statement of what was said about building churches on page 92, l. 22 to l. 28. Had the people from Star really been in consultation with him they must have told him that they already had a site selected. It seems incredible that both of these churches were built for the Orthodox Church and that yet Father Alexandroff, who secured the title for one and the funds for its erection, had absolutely no connection with the construction of the church in question. The fact that the words " Greek Orthodox " were written in the application for permit for logs—see pages 169 and 170—is dealt with in the judgment of the Trial Judge at page 175, l. 44 to page 176, l. 8. Apart from the fact of the words written underneath the blank I crave leave to refer at this stage to my comment in this factum as to the mode in which the people understood the term " Orthodox."

Halkow, page 128, l. 13–23.

(23)

Defendants would seem to contend throughout the suit that the actions of a handful of the leading men and the opinions expressed by them are to be taken as binding upon the whole Congregation. Granted that all Defendants contend for as to the purpose and results of the meetings held at Halkow's and Sawko's, in the winter preceding Father Dmytrow's first visit and as to what transpired at the services of Alexandroff and Kamneff in the summer of '97 be true, they have still failed to give the slightest evidence to show that the persons named had any authority, express or implied, to bind the Congregation, and throughout the evidence

from first to last it is perfectly manifest that the whole Congregation, except a few individuals whose actions are so much discussed, have never changed in their faith in the slightest; have never expressed, either collectively or individually, any aversion to acknowledging papal supremacy, so that the real argument for the Plaintiffs might be narrowed down to this: All of the people forming the Star Congregation were, when they came from Galicia, Greek Catholic Uniates. Defendants have failed to show that any change has taken place in them, except in the case of a few individuals. Those few individuals cannot control the faith of the Congregation, which remains as it always was—Greek Catholic Uniate. This alone is sufficient to justify the finding that the church was built for and is now owned by a congregation of the "United Greek Catholic Church."

(24)

A very large quantity of evidence was given as to certain meetings held at Halkow's and Sawko's in the winter preceding the first visit of Father Dmytrow, which was at Easter, 1897. Plaintiffs contend that nothing said or done at those meetings has any bearing upon the questions in this suit. Iwan Lakusta proves that there were three meetings, two at Sawko's and one at Halkow's, page 115, l. 24–25; that at the first meeting the only persons present were Halkow, Sawko, Fedor Nymyrski and he himself, Lakusta. At the first meeting these four men appear to have written a letter to the Orthodox bishop, Nikolai, in San Francisco. At the second meeting a letter was received from the Orthodox bishop and in evidence as Exhibit 5, page 166, was received and read by these same four men. This first letter was dated January 8th. A second letter was written by the bishop which is in evidence as Exhibit 6, on page 167, same being dated February 5th, 1897. The second time this letter was read Lakusta claims that

(1) Petro Melnyk,
(2) Nikolai Teczkowski,
(3) Iwan Danczuk,
(4) Lewko Proczinski,
(5) Ilko Senatowicz,
(6) Iwan Halkow,
(7) Fedor Nymyrski,
(8) Konstantin Nymyrski,
(9) Iwan Sachmann,
(10) Wasyl Krys,
(11) Wasyl Paisz,
(12) Jusko Diwenka,
(13) Dmytrow Maceborski,
(14) Oleksa Chorney,
(15) Hnat Samborski,
(16) Petro Roszkosz.
(17) Jurko Kuziek,
(18) Michailo Melnyk,
(19) Nikolai Melnyk,
(20) Wasyl Feniak,
(21) Michailo Polushie,
(22) Iwan Pylypiw,
(23) Wasyl Polushie,
(24) Iwan Dembrowski,
(25) Wasyl Lopoczinski,
(26) Jehosophat Lopoczinski,
(27) Wasyl Nikephoriuk,
(28) Fedor Kinasz,
(29) Petro Kinasz,
(30) Fedor Melnyk,
(31) Iwan Hawrylenko,
(32) Fedor Rudyk,
(33) Wasyl Pesclawetz,
(34) Pavlo Koberski,
(35) Iwan Lakusta,
(36) Iwan Tymniak,
(37) Eli Danczuk,
(38) Anton Sawka,
(39) Dmytrow Prokopczak,
(40) Stefan Czczak,

(41) Petro Nimczuk,
(42) Jusko Proczinski,
(43) Iwan Kudryk,
(44) Aryan Andruchuw,
(45) Jusko Jadlowski,
(46) Bautko Prus,
(47) Dmytrow Zachalko,

were all there. He goes on to say that—

"We came to the conclusion that we were going to build an Orthodox Church."

Page 116, l. 1–2. He fails entirely to describe in what manner they came to the agreement. He states that Fedor and Konstantin Nymyrski were the only two dissatisfied, they being so on the ground that they wanted the church built on their own place so that they need not go so far. Iwan Halkow corroborates Lakusta as to there being only four at the first meeting, and on the very next page says that all the Galicians were there.

Of this long list of 47 names the following were never members of the Congregation at Star, although doubtless most of them attended the first services of Father Dmytrow following immediately after these meetings at Halkow's and Sawka's:—4, 6, 7, 8, 9, 10, 12, 13, 14, 16, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, or in all 32. The remaining 15 were members of the Star Congregation. Of these 15 number 1, 2, 3, 5, 11, or five, are members of the Plaintiffs' party in this action, and 18, 19, 20, 21, 22, 23, 30, or seven, are members of the Defendants' party. Of the remaining three no evidence appears as to the position they take in the matter, but every one of these fifteen members of the Star Congregation were members continuously from the first visit of Father Dmytrow to the arising of the difficulties in December, 1900. Ilko Senatowicz on oath denies having been at any meeting at Sawko's prior to the coming of Father Dmytrow. In any event, the effects, if any, of these meetings at Halkow's and Sawko's appear to have been done away with by that of Father Dmytrow's first visit, which took place almost immediately after those meetings. Father Dmytrow held a service attended by all the countryside at this very house of Halkow's.

(25)

As to the grounds taken in the notice of appeal. The first five grounds are already fully covered by the evidence quoted under the various findings of fact necessary to the conclusion that the Congregation was a Uniate Congregation.

As to the sixth ground—It is contended that the evidence shows no desire of any kind on the part of the Congregation as a whole, other than to continue steadfast in the faith in which they were brought up—the Greek Catholic Uniate faith. The evidence shows some indication of a desire on the part of a few of the Congregation, as far back as the winter and summer of 1897, to join the Russian Orthodox Church, but as every one of them, except the small number who are pointed out as having actually gone over in '97, continuously accepted the ministrations of Father Dmytrow, Father Tymkiewicz and Father Zacklynski, besides the fact that a large number, including the lay Defendants, signed a document stating themselves to be Uniates and asking for a Uniate priest, the evidence must be considered as showing a complete abandonment by them of any such desire in the fall of '97 when Father Dmytrow was there the second time.

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As to ground seven—The evidence is clear and uncontradicted that Fathers Dmytrow, Tymkiewicz and Zacklynski were duly accepted as regularly ordained Greek Catholic priests by Bishop Legal who is the chief ecclesiastical authority of the Greek Catholic Church in this country. No evidence has been given to the contrary.

Legal, page 16, l. 41 to page 17, l. 2 ; page 17, l. 20–27 ; page 17, l. 41–43.

Dated at Edmonton, N.W.T., April 4th, 1905.

C. DE W. MACDONALD,
Of Counsel with Respondents.

No. 74.
Reasons for Judgment.
Chief Justice Taschereau.

In the Supreme Court of Canada.

Between

Michailo Polushie and others . . . (*Defendants*) *Appellants*,

and

The Reverend Iwan Zacklynski, Pavlo Pasemko and Petro Melnyk, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as individuals as priest and members of the said Congregation, suing on behalf of themselves and all other members and adherents of the said Congregation . (*Plaintiffs*) *Respondents.*

Reasons for Judgment in the Supreme Court of Canada.

The Chief Justice (dissenting) :—

This is an appeal upon a question of fact from the concurrent judgments of the two Courts below. The case is a complicated one, but I would not feel justified in holding that the judgments in favour of the Respondents are clearly wrong. The findings of the Trial Judge, after a careful and patient hearing of the numerous witnesses brought forward by both parties, should not be interfered with.

Mr. Justice Girouard.

Girouard, J. (dissenting) :—

This appeal involves no principle of law, but a mere question of fact, namely, whether a certain church built by Galicians in the North-West Territories was intended for a Russian Orthodox Church or a Greek Catholic Church in communion with the Church of Rome. After reading the evidence, I think that the least that can be said is, as found by the two Courts below, that it is very contradictory. The Trial Judge, who saw the witnesses, found it not satisfactory, especially as to the change of religious faith or severance from the Church of Rome. His judgment shows that he believed the Plaintiffs' witnesses rather than those of the Defendants. He observes :—

" It is impossible for me to believe that they (the Galicians of Star) could " have attended the services of Fathers Dymytrow, Tymkiewicz and Zacklynski

" Roman Catholic priests) extending over a period of four years and have remained " during the whole of that period in ignorance of the fact that their services were " those of the Uniate (that is Roman Catholic) Church and not of the Orthodox " (Russian) Church."

In appeal, Mr. Justice Wetmore says that the evidence is of a very contradictory character, and he adds :—

" If I had been in his place (Scott, J.) my findings would have been of a similar " character. But whether they would or not, this is not a case where a Court " of Appeal should, in view of the conflicting character of the testimony and of " the conclusions of facts open to be inferred from it, interfere with the Trial " Judge's findings."

When we read the letter dated 1st April, 1900, addressed to the Spiritual Father Zacklynski (one of the Respondents, undoubtedly a Roman Catholic priest), in which two of the Defendants and some twenty-two co-religionists who signed it declare that they are " Uniates," that is, in union with the Church of Rome, and expressed the following request :—

" We require to have you, Rev. Father Zacklynski, permanently for our " pastor and we will pay you a yearly salary of two dollars per family. Each " half-year we will bring the money, besides the revenue from fees. We have " a church finished. In the church we have an altar and symbolium and cross " and two banners. Of church books we have the gospels and ritual for precentor " and viaticum and further the collects. The presbytery is not yet finished, but " we shall finish it in a short time, but for the meantime we have a suitable residence " 100 paces from the church. We have a very good farm for the Spiritual Father, " the same land on which the church is built ; "

when we read this and other evidence, it is almost impossible to come to the conclusion that the Trial Judge was wrong.

Two Courts, undoubtedly more acquainted with the subject matter than we are, and knowing better the locality and the people interested, their customs, manners, education and intelligence, came to the conclusion that the Plaintiffs must succeed. The Appellants admit that the evidence is contradictory, in fact hardly one single fact of importance could be agreed to by counsel before us. Is this a case where the findings of two Courts should be disturbed ?

If I were satisfied that it was wrongly decided I would not hesitate to reverse, but I am not satisfied that the Courts below were wrong. The very title of the church, rightly or wrongly—that point is not before us, for we are not called upon to correct it—shows that it was in favour of the " Greek Catholic Church," that is the Roman Catholic Church, to which these people always belonged before coming to this country, and not to the Russian Orthodox Church. I recognise the right of every congregation or individual to change his religion, and adopt any one he chooses not prohibited by law, but that change must be made in no equivocal terms. Here we have no resolution of the Congregation ; the opinions or consents of individual members taken by one man hired to do so at so much per head cannot change the situation ; he did not even obtain the consent of the majority of the Congregation. Even if he did the minority is entitled to hold the property, as the nature of the trust cannot be changed or altered except by and with the consent

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—*continued.*

of all parties interested, or an Act of Parliament. The General Assembly of the Free Church of Scotland vs. Overtoun (1904) A.C. 515 is an authority in point.

The relinquishment by the Roman Catholic bishop, so much relied upon by the Appellants, means nothing as far as the Roman Catholic creed is concerned. There is no law in the North-West Territories or in any part of the country or in the Catholic Church government which requires that the title of a Roman Catholic church should be in the name of its diocesan bishop ; it is usually done in this manner, but there is no law which requires it should be so done. In the province of Quebec it is not so held, and according to the common law prevailing anywhere in the Dominion, it may be held in the names of trustees (as in this case) for the benefit of any church designated. An ordinance passed in 1898 by the North-West Territorial legislature so provides in express terms. The Greek Catholic Church cannot mean the " Greek Orthodox Church " first mentioned in the requisition for the permit to build, and subsequently changed in the title to " Greek Catholic Church." The very fact that the two names are used shows that they cannot mean one and the same Church and the evidence establishes that they constitute two different bodies. The letter of the Dominion lands agent to the Department, of the 25th May, 1898, cannot supersede the certificate of title.

For these reasons I have come to the conclusion that the appeal should be dismissed with costs.

Mr. Justice Davies.

Davies, J. :—

This Case arose out of a dispute between rival bodies of Galicians residing in a settlement called Star, N.W.T., as to the religious uses and purposes to which the church built by them in that settlement should be dedicated.

The Plaintiffs, who sued on behalf of themselves and other members of the Congregation of the church, claimed an injunction restraining the Defendants in whose names, as Trustees, the church premises stood, from using or permitting the church to be used for religious purposes and uses other than those in communion with and under the jurisdiction and control of the Roman Catholic Church.

The judgment or decree from which this appeal is taken adjudged the lands of the church erected thereon to be " the property of that branch of the Greek " Church and which is united with the Roman Catholic Church and which may be " properly designated as the United Greek Catholic Church."

The Defendants contested the suit on the ground that the people who built the church and obtained the patent for the lands had, before or at the time they began to build the church and afterwards when they obtained their formal patent for the lands, severed any connection they may have had when in Galicia with the Roman Catholic Church, and repudiated being subject to the jurisdiction and authorities of that Church, claiming to be united with and subject to the jurisdiction of the Greek Catholic Orthodox Church, the bishop of which, in North America, has his seat in San Francisco.

Although the question incidentally arises it is not necessary for us to decide whether the church and premises in dispute are subject to the jurisdiction of the Bishop of the Greek Catholic Orthodox Church or not. The sole question

necessary for us to determine is whether or not they are united with and subject to the jurisdiction of the Roman Catholic Church.

If they are not the appeal must be allowed and the action dismissed.

The facts are very voluminous and complicated, and rendered more difficult properly to appreciate and decide because of the singular and unique position in which the Church to which these people belonged in Galicia stood towards the Roman Catholic Church in that country, and also because the witnesses with rare exceptions gave their evidence through interpreters, many of the witnesses understanding the English language very little, and most of them not at all; while the great bulk of them were almost totally illiterate and ignorant.

It is clear beyond any doubt that the Russo-Greek Catholic Orthodox Church as such was prohibited for political reasons in Galicia by the Austrian Government, and that the Church which was permitted and did exist in Galicia and which may properly be called a branch or offshoot of that Church, was subject to the jurisdiction and supremacy of the Pope of Rome, though having a hierarchy and bishop of its own and a " use " or form of worship and ritual with vestments similar to those of the Greek Church.

What the official or legal name or designation of that Church in Galicia was, is difficult if not impossible to determine under the evidence.

The Respondent in his factum and argument at bar insisted that it was the Greek Catholic Church, the same designated in the patent of the lands, but admitted that it was known as and called by many different names according to the nationality or religion of the person who spoke of it.

" The Ruthenians themselves call it ' The Ruthenian Church.' The Poles " call it ' The Ruthenian Church.' The Church of Rome also calls it the ' Ruthenian " ' Catholic Church,' Catholics of the Greek rite, ' The Graeco-Ruthenian Church,' " and outsiders in order to give it a description properly describing its relation " to the Greek Church and the (Roman) Catholic, call it ' Uniate ' or ' Greek " ' Uniate.' "

The Roman Catholic Bishop Legal says of it :—

" The Greek Church is the portion of the Christian Church not in communion " with Rome which uses the Greek or Oriental liturgy. The Greek Catholic " Church of Galicia is a portion of the Roman Catholic Church using a liturgy " in the Slavonic language. I have heard it called by the name of ' The Uniate " ' Greek Church.' We also call it ' The United Ruthenian Church ' and ' The " ' United Greek Ruthenian Church.' I would call them Catholics of the Ruthenian " rite to distinguish them from Catholics of the Latin or Roman rite. The Greek " Catholic Church of Galicia has exactly the same creed as the Roman Catholic " Church, but I believe their liturgy is that of the Greek or Eastern Church, which " is very different from that of the Roman Catholic Church."

The testimony on the other hand of ecclesiastics called on behalf of the Defendants was to the effect that the Greek Catholic Church meant the Greek Orthodox or Greek Catholic Orthodox or Eastern Church, as distinguished from the Roman Catholic or Western.

The Court below in its form of judgment or decree says that it is that branch of the Greek Church which is united with the Roman Catholic Church, and which may be properly designated as " The United Greek Catholic Church."

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Mr. Justice Davies
—continued.

I am satisfied, however, from a careful perusal and comparison of the evidence of the different witnesses, that the phrase or terms used in the patent, as I gather from the certificate of title, to describe the church in dispute, namely, " The Greek " Catholic Church," does not necessarily and legally imply the Roman Catholic Church or a Church in union with and subject to its jurisdiction, and that the name and description being doubtful and ambiguous, we are necessarily driven to a consideration of all the facts and circumstances connected with the building of the church and the patenting of the land, in order properly to determine the meaning of the terms of the trust.

As to the difference between the Church indifferently called by the witnesses the " Uniate," or " Greek Uniate," or " Greek Catholic," or " Ruthenian Church," or " Greek Ruthenian," or more popularly " Ruska Church," as it existed in Galicia, and designated by the Court below in their decree as " The United Greek Catholic " Church," and " The Greek Orthodox Church of the East," they are formulated by agreement of parties in the Appeal Book.

The former affirms and the latter denies the following Roman Catholic dogmas or beliefs :

1. The Infallibility and Supremacy of the Pope.
2. The Immaculate Conception of the Virgin.
3. Purgatory, and
4. The double procession of the Holy Ghost.

The study I have given to the evidence convinces me that the Trial Judge, Scott, J., was right in his conclusion that these Galician peasants " did not trouble " themselves very much over the differences in creed between the two Churches " (Eastern and Western). Many of them do not understand what these differences " are."

There is also little, if any, difference in the rites, ceremonies, vestments and ritual of the Orthodox Eastern Church or Greek Orthodox Church, and those of the Galician Church called " Uniate," " Ruthenian," " Greek Catholic," and " Ruska." To the ordinary ignorant Galician peasant such as those of this Star Congregation, I would conclude from the evidence there would not be any.

The real vital difference present to the minds of these people, as I gather from their testimony, was the supremacy of the Pope and the authority and jurisdiction of the Roman Catholic bishop over them.

In their own country, Galicia, these people ecclesiastically and the Church to which they belonged, though having bishops and a hierarchy of their own, were beyond doubt subject to the supremacy and jurisdiction of the Pope.

As Bishop Legal says in his evidence :

" If Greek Catholics (by which term he meant these very people) go to a place " where there is no hierarchy or bishop of their own rite they are enjoined to " submit themselves to the Roman Catholic hierarchy there, but they must return " to their own rite as soon as an opportunity occurs."

When these people emigrated to the North-West they were not only free to follow or accept any form of religion that they wished and determined on, but they knew that was so. Witness after witness testifies to this fact.

The question then arises : Did they remain in the Church to which they belonged in Galicia owing obedience to the Pope of Rome and subject to his supremacy or did they unequivocally change and throw off that allegiance ?

I am of opinion that they did the latter, and that amid much conflict of testimony, hard, if not impossible, to reconcile on other points, the evidence on this one point is clear that these Galicians made up their minds on coming to the North-West Territories to repudiate and did repudiate the authority and jurisdiction over them of the Pope and of the Roman Catholic bishop of the diocese, and that the church they built was not intended to be, and was not in law, under such jurisdiction.

Evidence was given in order to show why they did this. That it was owing to the taxation they had to bear for the Church in Galicia and which they feared they would be subject to in Canada. That it was because their hearts were with the Church of their brothers in blood in Russia and that they only had submitted in Galicia because the law prohibited there the Greek Orthodox Church. That they really believed the tenets and held the faith of the Eastern Church as distinguished from the Western. These reasons do not concern me. They may be true in whole or false in whole, true in part and false in part, as from the evidence I conclude. But what I am concerned with is the fact itself. Did they for any reason clearly repudiate the supremacy and jurisdiction of the Roman Catholic Church, and erect a church building intended not to be in communion with it ?

Whether or not they could without such repudiation, and if they had remained subject to the jurisdiction of the Church of Rome, have secured to themselves the right to worship in this country according to the forms, ceremonies, and rites of the Greek Orthodox Church which they seemed to have possessed by law in Galicia, including the right which they also possessed there to have married priests, is a question I do not propose to enter into, as it is not necessary for the decision of this appeal. I will assume for the purpose of my argument that they could. What then are the facts in evidence respecting the determination of these Galicians to establish a church not in communion with or subject to the jurisdiction of the Pope ?

They are of several kinds. First oral evidence of their acts and declarations when preparing to build and while building their church and obtaining their patent ; second, written evidence of their intentions, desires and determination ; and third, evidence that the Roman Catholic bishop of the diocese appreciated and recognised the facts, accepted them doubtless reluctantly, but acquiesced to the extent hereafter referred to.

In 1892 the Galicians first began to come to the present settlement. In 1896, or the winter of 1897, there were about 18 families there, including both settlements, Star and Wostok, and they held a meeting together at Sowka's house and determined to write to the Greek Orthodox Bishop Nicola, at San Francisco, for a priest. In April, 1897, Reverend Father Dymytrow, a Uniate priest in communion with the Church of Rome, visited the settlements and held three services. In June, 1897, the Reverend Fathers Kamneff and Alexandroff, two priests of the Greek Orthodox Church, sent by Bishop Nicola, came to the colony, held services, administered sacraments and, it is said, received the allegiance to the Orthodox Church of some 60 families to which numbers the colony was now increased. They set about organising congregations, getting land, permits for logs, &c., the Orthodox congregation of the settlement of Wostok being one result of their visit.

There is some doubt and dispute as to the number of the families of the Star settlement that took an active part in these proceedings, and I am not inclined to lay too much stress therefore upon these facts. But that many of the leaders of the Star settlement associated themselves with those of the adjoining settlement of Wostok in all that was done until the moment when the location for the church came to be decided on seems to me clear.

In September, 1897, Father Dymytrow returned for a two weeks' visit holding services and administering the sacraments. At this time the project of building a church at Star settlement ripened towards completion. The land in question was procured, a cemetery upon it was consecrated by Father Dymytrow and at one of the services held in a school house Bishop Legal, coadjutor of the Roman Catholic bishop of the diccese, was present and at the close of the service pronounced the benediction. The services were conducted in a language the bishop did not understand, and few if any of the people present understood him, but the bishop was then aware of the desire of the people not to remain in communion with his Church, promised them assistance, and sought through an interpreter naturally and properly to retain them in that communion. He afterwards no doubt in the most perfect good faith, but without the knowledge of any of the Galicians, had the necessary entry made for the land in the name of the Roman Catholic bishop of the diocese and it was not till some time afterwards they found out the fact.

The decision to erect a church having been reached in November, 1897, the three present Trustees made application for a permit to cut timber on the Government lands for a church and the Government agent at Edmonton sent to them a form of requisition to be filled out and signed. Not being able to read or write they went to a Mr. Morrison who was accustomed to assist them in any writings they required, taking with them the form of requisition which was partly in blank. At its head in the agent's handwriting was a memo. as follows:—

"I must know where the church is to be built, on what quarter section, and "this requisition must be signed by the Trustees for the church or by the priest "in charge."

Then followed the printed form with blanks for the quantity of timber required, the place where it was desired to cut the timber, and the quarter section where the church was to be built, all of which Morrison filled up. Then followed "remarks," written also by the agent, as follows:—

"This timber is required and will be used in the erection of a church "building for the mission of the Church and for no other purpose.

Morrison says he interrogated the three Trustees as to the kind of church they required and ascertained it was for the "Greek Orthodox," which words he inserted in the blank by their instructions. These words are entitled to greater importance because in blue pencil beneath the blank left by the agent were written the words "State whether Catholic or Greek Orthodox." He therefore had to interrogate them on the very point we now have in dispute. Was the church proposed to be built to be a Catholic church or a Greek Orthodox church, as opposed to a Catholic one, by Catholic all parties understanding Roman Catholic? Having got their answer "Greek Orthodox," he wrote in the words and witnessed their marks being put to the requisition. As the document was

put in evidence and comes up before us amongst the original records I find the words " Greek Catholic Church " written in blue pencil across the face of the requisition, but there is no evidence when or by whom they were written, and Morrison does not remember whether they were there or not when he filled up the document. I attach great importance to this document not only because of its contents, but because of the time when it was filled up, long before there was the slightest sign of any trouble between the members of the Congregation. If these three Trustees were at that time voicing the desires and intentions of their neighbours and friends by whom they had been appointed, there can be little doubt what kind of church was intended to be built.

This was in November, 1897. It was not till January, 1898, that Bishop Legal made the entry for the land in the bishop's name.

The Galicians that winter went to work getting out the logs for the church, and in April had it partially erected when Father Tymkiewicz arrived. Some of these Galicians worked for three winters getting out logs and lumber under this permit, and it was with these logs and this lumber the church edifice was built. The Rev. Father was sent to this country at the instance, as I understand, of the Roman Catholic bishop. He was a " Uniate " churchman, in communion with and subject to the Church of Rome, and remained with these Galicians as their priest from April till August, 1898. For some reason, doubtless good, his evidence was not given, but the Defendants and other members of the Congregation gave evidence which was not rebutted that he represented himself to the Congregation as an Orthodox priest, and told them they should not take anything from the French bishop, that he, Tymkiewicz, did not belong to the French bishop and that if the people took anything from him he, the priest, would leave them. This it was said he told them every time he held Sunday services. It was during the time he was their priest, and with his full knowledge and concurrence, if not at his direct instance, that the people succeeded in getting the entry made by the coadjutor Bishop Legal for the land cancelled and a relinquishment signed by Bishop Grandin or the proper officials of the diocese, of the lands. This relinquishment was not in evidence either, but it was accepted as satisfactory by the Department before issuing the patent to the Trustees.

When in April or May the members of the Congregation learned that the title to the church land had been applied for in the name of the coadjutor Bishop Legal, meetings were held and it was determined to get the title back. Bishop Legal himself had gone to Europe, but several visits were made by the Defendants and other leaders amongst the Galicians to Bishop Grandin or the officials acting for him, with the result that the bishop finally executed the necessary relinquishment.

The formal application by the Trustees for a patent was not in evidence, but the letter written by the agent of the Department in Edmonton to the Secretary of the Department of the Interior, Ottawa, was put in by consent, perhaps to avoid necessity of calling the agent. However, the letter is most important as showing what the intentions, desires and determination of the people of the Star settlement were at its date, 25th May, 1898, when Tymkiewicz was their priest and before, as far as I can gather, there was the slightest dispute or variance between or amongst the members of the Congregation. The letter reads :—

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In the Supreme Court of Canada.

No. 74.
Reasons for Judgment.
Mr. Justice Davies.
—*continued.*

"Edmonton, 25th May, 1898.

"Sir,—

"With reference to your file 438627, I beg to enclose herewith what purports "to be an assignment from his Lordship Bishop Grandin of L.S. 1 of Section 27, "56, 19 W. 4 M.

"It appears to have been an error asking for a patent in his Lordship's name. "This land is not intended to go to the Catholic Church, but to the members of "the Greek Catholic Little Russian denomination who are settled in this vicinity.

"The Trustees for these people are Mikel Polischy, John Polopovisky and "Mikel Melnyk.

"They were very deeply concerned over the fact it was proposed to hand this "land over absolutely to the Roman Catholic Church; they insist on having the "entire control in their own hands, and as it is highly desirable to meet their "wishes in this connection, I should be glad (if the relinquishment which I herewith "enclose is inadequate) if you will be so good as to have an instrument prepared "to meet the case.

"I am, Sir, your obedient servant,

"A. D. L.

"The Secretary, Department Interior,
"Ottawa, Ont."

It was in July following the receipt of this letter that the patent of the lands issued to the Trustees, Defendants, "in trust for the purposes of the Congregation "of the Greek Catholic Church at Limestone Lake in the said district."

Reverend Father Zacklynski, who came to them as priest about the latter end of July, came, therefore, after the issue of the patent.

I am of opinion that the construction of the patent must be determined by the words themselves and if they are ambiguous by the facts and circumstances surrounding and preceding its issue, and that the great mass of testimony as to Zacklynski's engagement by these Galicians as their priest, and doings and sayings while with them, has little or no relevance to the real question to be decided. I hold the same with respect to the subsequent engagement and services of Korchinski, a priest of the Greek Orthodox Church, and who was made one of the Defendants in this suit, but disclaimed any desire to enter or be forced into litigation.

The trusts existed when each of these priests came there. It only remains to determine what they were. That determination must rest upon preceding and contemporary facts and circumstances and not upon subsequent ones, more particularly those arising after the trouble in the Congregation arose.

Reviewing, therefore, these preceding and contemporary facts and circumstances in the light of the declarations contained in the requisition for the timber limit and in the land agent's letter for the patent, enclosing the relinquishment of the lands from his Lordship Bishop Grandin, I cannot entertain any doubt that the "Congregation of the Greek Catholic Church at Limestone Lake" did not mean a Church united with and subject to the jurisdiction of the Pope of Rome, and the authorities of the Roman Catholic Church.

I think the Plaintiffs have entirely failed to discharge the onus of proof which

lay upon them and that the appeal should be allowed, the judgment of the court below reversed, and the action dismissed with costs.

Idington, J. :—

The Appellants obtained from the Crown a grant of sub-division one of section twenty-seven, township fifty-six, range nineteen west of the fourth meridian, " in trust for the purposes of the Congregation of the Greek Catholic Church at " Limestone Lake in the district of Alberta."

This is evidenced by a certificate of title, dated 6th July, 1899, issued out of the Land Titles Office, for the North Alberta Land Registration District.

The grant was led up to by events I will refer to, which took place eighteen months, or more, prior to this date.

It is unnecessary here, to determine the exact trusts upon which Defendants hold the property in question.

It is only necessary to determine, whether or not that trust was and is, explicitly or impliedly, to serve the purposes of a church, and all that might be incidental to a church, for the uses of a congregation that recognised and recognises the jurisdiction of the Pope.

If such was not the trust then the Plaintiffs' action must fail.

Such is the legal issue. Let us not lose sight of it.

The learning imported into the case, as to the racial, or linguistic, or ecclesiastical origins of the people concerned, or of their forefathers, matters much less than such an ardent pursuit, as is presented, of that learning might imply. Still less does the name of the faith, or church organisation or growth of either matter here. The name Greek Catholic is ambiguous. It has been used as properly designating entirely different bodies.

A few salient facts relating to the origin and status of that branch of the Roman Catholic Church, that may be known here, in order to avoid any confusion, as Uniates, of Galicia, must be kept in view. As to these facts there is no room for controversy and in truth there is not any controversy.

The outcome of ancient strife, national and religious, has left in Galicia, a province of Austria, three Churches recognised by the State and each with a distinctly separate ecclesiastical head, responsible to, and recognising, the jurisdiction of the Pope.

By reason of their original race and creed, which had disavowed the authority of the Pope, the ancestors of the people now in question, when they came to the recognition of the papal authority, were known to learned ecclesiastics as " Uniates."

It was an appropriate designation of them. It was so none the less, though it may have been a constrained recognition.

It was not, apparently, the name that the people generally called themselves. The very constraint, through which it was brought about, may have tended in the popular mind to the ignoring of the term Uniate. And as a result, they called and continued to call themselves as of the " Greek Catholic Church " up to the time now in question.

It is to be observed that there seems to have been, notwithstanding all this long recognition on the part of these people and their ancestors of the jurisdiction of the Pope, a tendency to revert to the ancient faith and practice.

This kind of atavism, if I may be permitted to use such a word in relation to Church matters, is not without precedent or parallel.

I am quite prepared, therefore, to give credence to the mass of evidence, I may say overwhelming mass of evidence, in this case, that very many of the early Galician settlers in the North-West Territories were animated by a desire to assert, in the first place, what to them was an unwonted freedom of action, and in the next place to ignore the papal authority.

This was shown by the first step that the Defendants and others took when they moved in the matter of securing for themselves and others public religious services in the new settlement.

Now what did they do ? Did they go to the Roman Catholic bishop in the North-West and ask him for guidance and assistance ? If they had been loyal believers in the authority of the Pope, surely that would have been the first step they would have taken. Instead of doing so they write or one of them writes to the Bishop of Alutzk and Alaska, to have him supply the settlement with a priest. Certainly this bishop was not a Roman Catholic bishop. His reply seems to indicate that he had the greatest antipathy to the Pope and papal authority. Yet this letter in reply was read in public meeting to the people whom the Appellants represented and claim yet to represent.

We hear of nothing to indicate objections thereto on the part of anyone.

This correspondence had its beginning in a meeting of these people in 1896. And it seems to me to have in it the root of the whole matter.

A second letter was received. Another place benefited by it and a church there arose out of it as well as this one in question.

A good many of the people, at first concerned in the movement, went off to this other church which was nearer to them I take it. They were all from Galicia, both those who went to this church and the other one. And many of them in the other church had the same origin as those who are now in question.

There is no doubt of the other church being one that does not recognise the papal authority.

There is only, in the fact I refer to of some going to that kind of church, this : that it shows the ferment amongst these people had begun and spread as the Appellants assert.

The next important fact is the visit of the Reverend Father Dymytrow to the settlement in April, 1897, when he held three services there. He was in truth a Roman Catholic priest. Much stress has been laid upon this fact, and the further fact that some, if not all, of the Appellants and their friends attended these services. Why should they not have done so ?

It is beyond my comprehension to conceive why they should, if religious men, feeling the needs of public worship, and of the aids of a priest, abstain from doing so because the priest, in accord with them in other respects, was one who recognised papal authority. He was nearest there, in faith, to what they believed.

On the occasion on which Bishop Legal appeared, at one of such services, they were held in a school house, and not in this church. What were people like the

Appellants to do under such circumstances? Keep away, or go and make a nuisance of themselves? It is urged, if I understand the contention on this point, that they should have protested against the bishop's presence. I most decidedly say, decency forbade them doing so.

Father Dymytrow did not build, or initiate then the building of, the church in question. He said they were too poor to build then. Notwithstanding that, within two or three months afterwards, they followed out what they had previously projected, and still desired, in regard to building this church. They met on more than one occasion to settle this matter of church building and the site thereof. And every Appellant has sworn, and is abundantly corroborated by many other witnesses, that they determined to build a church for the uses of those who desired to worship in a Greek or Greek Catholic or Russian or Orthodox Church or church of any other name one pleases, but, most clearly and decidedly, not one over which the Pope would have jurisdiction.

They selected the Appellants as Trustees.

In June, 1897, two men, named respectively Kamneff and Alexandroff, came as missionaries and held services according to the rules of the Greek Orthodox, or from a Roman Catholic point of view, heterodox church. Reverend Father Alexandroff was then, he says, only a deacon of that Church.

The Reverend Father Kamnell, I take it, was a priest in that Church.

They were sent by the "Bishop of North America and the Aleutian Islands," the same that under another title I have already referred to.

These two missionaries served, in the Limestone Lake district, for a considerable time, and chose a church site, and made entry in the Land Office therefor, and suggested to the people concerned in this to take another selected site. But its being too far away did not meet with approval.

There was no church built or started at the place now in question when Alexandroff came. He came in the summer, and the church building started in the fall of the same year. The site in question was selected whilst Alexandroff was there; some say by him or approved by him.

Wasyl Polushie says:

"We started to get out the logs shortly after Father Alexandroff came the "first time and were working at it when Father Dymytrow came the second time."

It seems from some of the evidence that logs were got from private property and this may relate to such contribution.

But the next step taken to build was getting a permit from the Government to use timber from Crown lands.

This very important piece of evidence shows an application of 29th November, 1897, signed by Michailo Melnyk and Michailo Polushie, two of the Defendants, and one Fedor Melnyk. All signed this by making their mark. It is a printed form filled up by one who had no interest in the matter, and beyond doubt wrote just what he was told to write.

In filling up there appears the following:—

"This timber is required and will be used in the erection of a church building "for the mission of the Greek Orthodox Church, and for no other purpose."

On this form appears a memo. in pencil "state whether Catholic or Greek

"Orthodox" and in pencil across a corner of the form appear words "Greek "Catholic Church."

How this pencil marking, in handwriting of clerks or officers of Government, came about is not explained, and I will not speculate. One thing is quite clear, that at least two of the Appellants on the date of this document intended that the church should be built for the "Greek Orthodox Church," which, it is conceded on all sides, is not the Church for which Respondents claim it, but that for which the Defendants now claim it.

Are we to suppose that these men deliberately at that time set about to perpetrate a fraud? Why should they? No doubt the bounty of the Crown was open to any Church in that country. No need of fraud.

This, it must be observed, was at or about the time Father Dymytrow was in the neighbourhood for two weeks. Were they acting for him or with him? Can it be supposed that it was the result of anything suggested by him? If so, it would, I infer, be more in accord with him as he is presented by the evidence for Appellants, rather than what the Respondents ask us to infer it was.

There is much evidence to show that he told them not to accept anything from the French bishop or to recognise him. And that is uncontradicted.

Shortly after or about this time it seems Bishop Legal, or some one in his name, applied for the lot in question for the purposes of a Roman Catholic Church. We are not enlightened on this point by his evidence. Though he was a witness for Respondents, he was not asked as to how this came about, or the purpose of the surrender of claim to it which I am about to advert to.

It is quite clear, however, that when this entry was discovered by the Appellants and those they represented, that steps were at once taken to have it set aside.

The bishop, or those who represented him, after demurring yielded, and the claim the bishop had made was duly and properly assigned or surrendered to or for the Appellants. Thereupon the entry was made in the names of the Appellants, with the concurrence of the Reverend Father Tymkiewicz and a French priest, who, I take it, was there to represent the bishop.

Father Tymkiewicz is said to have been a Roman Catholic priest, sent from Galicia specially to minister to the wants of these Galicians. Why should he have taken this step? It may have been that he simply desired to appease these people whose church property in Galicia had usually been held by their own archbishop, and where that could not be done lay trustees were to be entrusted instead, but yet to hold it for the Roman Catholic Church or those in the fullest sense holding the faith of that Church.

Is the evidence consistent with that? Is it not rather consistent with an entire surrender of all claims of that kind in favour of the Appellants and their friends, holding the well-known views they did hold, on the question of the supremacy of the Pope?

I cannot conceive how, under all the circumstances, Father Tymkiewicz, knowing, as he must have known, the then attitude of these Appellants on the point in question, could have intended they should be bound or expected to execute a trust so repugnant to them.

Nor can I understand why, if he did, no record was kept by him or some one else of what the trust was.

Again, it is said by many witnesses that Father Tymkiewicz had been present at the meeting of the people moving to get the property out of the bishop's hands and, later, told them not to take a single thing from the French bishop. How can that be at all reconciled with the creating of a trust in favour of Roman Catholic authority or of those of the Roman Catholic faith ?

Then we have before this surrender the proper remonstrance of the bishop with these people for leaving or wanting to leave their religion. We have also evidence of his promise, if they would abide by the old faith, to help them build the church. And we have the fact that he never contributed anything to the erection of the church.

All that seems to me quite inconsistent with any intention, on the part of those concerned, to impose upon the Appellants any such trust as is sought to be enforced in this suit.

It seems quite consistent with a desire on the part of those having authority to speak for the Roman Catholic Church not to do anything that would, or might be, inconsistent with future pleasant relations with those who were so much akin to them in faith ; that gentle methods would be much more likely to lead them, or some of them, in the desired way than any legal bond.

The conclusion seems to me irresistible that once and for all the bishop, on behalf of his Church, abandoned all claim and thus ended the matter.

The Respondents, though calling him as a witness, did not venture to question him on this point. This seems most significant.

As to all that followed if the trust was not impressed at the outset it goes for nothing.

I cannot see why so much has been made of the later occurrences. The evidence as to Reverend Father Zacklynski is overwhelming that he was telling these people to have nothing to do with the supremacy of the Pope or with his Church, and it is not denied. Moreover, he ended, as he practically admits he began, by asking (if Spaczinski is rightly reported) this Congregation to abjure both Russian and Roman and keep their own Church. This latter incident is reported differently by other witnesses. Who is correct ? Why was the Plaintiff, Zacklynski, the author, it would seem, of all this disturbance, not brought as a witness to this wonderful thirty-five days' trial ?

Surely he was informed during that time of what was being said about him.

It is a remarkable thing that of those who testified for the Respondents the lay Plaintiff, Petro Melnyk, seems to be the only one of the settlers who had lived there from the time of the earlier meetings to organise a Church. Then came in March, 1897, Mr. Spaczinski, the leading witness for Respondents. He is sworn never to have contributed anything to building this church, and does not deny it. He is sworn to have recanted with the others, but denies it.

He, however, accepted the books of Father Alexandroff to act as lay reader, apparently in accord with the recantation. He was recalled in reply and states that Reverend Father Zacklynski asked them, at the rupture with him at his last meeting, to swear that they would stick to their own religion, not go over to the Orthodox Russian Church, nor to the Roman Catholic Church. Other witnesses differ from this version entirely.

He produces a book of which a part is translated. It indicates that " on

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" the 4th day, 6th month of 1898 subscribers to finishing the church " appear as follows, &c. The first name, of ten given is Pavlo Pasempko $15. In the evidence Pasempko states that he came to Alberta in May, 1899. Which date, 1898 or 1899, is correct ? Who is to blame for the inaccuracy ? Or are there two Pavlo or Paulo Pasempkos ? I think not. I refer to this trifling incident as illustrative of the difficulties in this case and doubt one may have as to the accuracy of Mr. Spackinski. I refer to these matters relating to him, because upon his accuracy depends the weight to be given to the signing of what I may designate " the call " to Father Zacklynski, which, though subsequent to the creation of the trust now in question, is a piece of evidence that if the signers perfectly understood when signing, tends to reflect upon their evidence a light leading to discredit them.

He testifies that when the Appellants and others signed the call to Father Zacklynski it was signed by all but four of those who did sign it, in a house he names, and that the paper was read by one Karetz to them. First he said it was written by Peter Stephura and then by Alexander Karetz and explains by saying Stephura had written one just like it. It contains the statement that the signers " are all Uniates." Zacklynski came six months after this was sent by Stephura. This witness, however, tells of one Petro Zwanycz writing Zacklynski to come, but does not say whether before or after signing this paper.

None of these alleged writers appear as witnesses.

A number of the signers deny the reading or hearing it read.

The original shows twelve out of twenty signers to have signed by means of a mark. It is difficult to fix the attention of illiterate and even many literate people, though apparently listening, so that they can catch the meaning of what is read, unless sentence by sentence is explained. No one ventures to suggest such a thing was done.

I would be slow to bind such people by the expression Uniate in such a document as meaning something that in the face of other facts is most improbable as having been at all present to their minds.

They had gone six months without a priest. Why ? Simply because they would not recognise the proper authorities of the Roman Catholic Church, at hand. And why not ? We are not offered any explanation.

We are told that many of them had in the time of the Reverend Father Alexandroff formally repudiated the head of that Church. And they had just after that objected to the land being in the name of the bishop.

When Father Zacklynski, who was found through the channels of a newspaper advertisement by him, and not through any application to the bishop, came, he if the evidence of a great many Church members is to be believed, was loud in proclaiming himself as an Orthodox Greek Catholic and not a Roman Catholic. And whenever he proposed borrowing from the bishop to pay a debt for the building of the priest's house, those people were up in arms.

I think one cannot help, in reading the evidence in this case, being impressed with the want of support Plaintiffs' case got from those who were there before the building of the church, and how strongly and distinctly those older settlers, who were there, and knew what had happened, and who were the most active in promoting it, and the chief contributors to the building, speak on the subject.

The circumstances, and the evidence, seem to point nearly all one way,

and that way against the establishment of a Church that acknowledged the jurisdiction of the Pope.

It is not a case of conflict of evidence so much as a case needing to properly appreciate the evidence given and then to disregard the trifling unimportant incidents and matters subsequent to the creation of the trust, when the general scope and purpose of the parties in relation to that trust had already been made clear, and to apply that properly appreciated evidence to the interpretation of the ambiguous phrase in this certificate of title.

With every respect I think this evidence was not properly appreciated in the Court below, and weight given to the subsequent events that should have been discarded.

I concur in the brief judgment of the Chief Justice of the Court below.

I would, but for the zeal with which the case has been pressed and the importance attached to it by those interested, have contented myself with that expression of opinion.

I think the appeal should be allowed with costs.

Mr. Justice Maclennan.

Maclennan, J. :

A very careful perusal and consideration of the evidence in this case have led me to the clear conclusion that we ought to allow the appeal.

It is clear that at and prior to the 29th of November, 1897, active proceedings had been taken among the Galicians in the vicinity of Limestone Lake for the building of a church. For this purpose land for a site and materials for the building had to be procured. The people were very poor, and it was thought that land might be obtained, and lumber also, from the Government without payment. When a question of site came to be discussed there was a difference of opinion depending upon distances and convenience. The ultimate result of this difference was that two churches were built, I think about six miles apart ; one of these was at Wostok, and it is admitted that the Wostok congregation is an undoubted Greek Orthodox congregation. I think that is an important fact, seeing that one section of those who were in the first place acting together on the project of building a church, and who had no differences among themselves, have built and are enjoying their property without dispute as Orthodox, while the other congregation, without any difference of circumstances, have on hand the present unfortunate dispute.

On the date above mentioned, the 29th of November, 1897, a requisition was made to the Land Office for a permit to cut timber for the church. The requisition specifies the land on which the church was to be built, and declares with special emphasis that the timber was to be used in the erection of a church building for the mission of the Greek Orthodox Church, and for no other purpose. That requisition is signed by three persons, two of them being two of the present Defendants. The land specified in this application consists of forty acres of Government land, and it is upon that land the church was built and now stands.

In pursuance of this application a permit was duly granted. It has not been produced, but it will be presumed to have accorded with the application. The people immediately proceeded to cut the timber and to erect the church, and it

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—*continued.*

was completed some time in the following year. Now, pausing here, what is the effect of what has been done? They have asked the Crown for a site for the purpose of building thereon a church of a specified character and denomination. They have also asked for a gift of timber for the same purpose. The gift both of the land and the timber is made and the church is built. The object and the purpose of the gifts are in writing. I think it plain that the church when built became and was under those circumstances impressed with the trust stated in the permit, namely, a trust for the Greek Orthodox Church, and for no other, and that if there were nothing else in the case, the Appellants would be entitled to succeed.

But that is not all. The Congregation appointed the three lay Defendants Trustees to receive and hold the title to the property—in pursuance of the ordinance, N.W.T. Cons. Ord. 1898, Ch. 28, and after the church was completed, or about completed, those Defendants applied to the land agent for a patent. The agent then on the 25th May, 1898, wrote to the Department of the Interior, at Ottawa, in effect asking for the issue of the patent to those Trustees. The agent refers to the fact that an application had been previously made by or in the name of the Roman Catholic Bishop Grandin for the land, but that he had assigned or relinquished all claim, and that "this land is not intended to go to the Catholic "Church, but to the members of the Greek Catholic Little Russian denomination "who are settled in this vicinity."

It is not disputed that these words correctly describe the Greek Orthodox Church, described in the permit for land and timber above mentioned.

The patent was issued in pursuance of this request. It does not appear what its date was nor what were its precise contents. All that has been proved is that a certificate of title was obtained by the Trustees under the Land Titles Act for the forty acres in question, expressed to be "in trust for the purposes of "the Congregation of the Greek Catholic Church at Limestone Lake."

The words Greek Catholic Church are ambiguous. There is much testimony that such words might mean either the Roman Catholic or the Orthodox Church. We must gather which is meant by evidence, and the letter of the agent applying for the grant would be sufficient to show that it was the Orthodox Church which meant. But if that were not sufficient, the fact that the Crown had previously, by its permit to build an Orthodox church on this very land, with logs also granted for the same purpose, to my mind make it clear to a demonstration that the land and church in question have from the beginning been held, as was expressly intended by the donor, the Crown, as a Greek Orthodox Church.

For these reasons, as well as for the reasons much more fully expressed in the opinions of my brothers Davies and Idington, which I have had the opportunity of perusing, and also for the reasons expressed in the dissenting judgment of the Chief Justice of the Supreme Court of the Territories, I am of opinion that the appeal should be allowed, and that the action should be dismissed with costs both here and below.

Formal Judgment.

In the Supreme Court of Canada.

Wednesday, the twentieth day of February, A.D. 1906.

Present:

The Right Honourable Sir Henri Elzear Taschereau, Knight, Chief Justice.
The Honourable Mr. Justice Girouard.
The Honourable Mr. Justice Davies.
The Honourable Mr. Justice Idington.
The Honourable Mr. Justice Maclennan.

Between

Michailo Polushie, Iwan Pylypiw and Michailo Melnyk (*Defendants*) *Appellants*,

and

Reverend Iwan Zacklynski, Pavlo Pasemko and Petro Melnyk, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as individuals, as priest and members of the said Congregation, suing on behalf of themselves and all other members and adherents of the said Congregation (amended by leave granted March 11th, 1902) . (*Plaintiffs*) *Respondents*.

and

Reverend Iwan Korchinski . . . (*Defendant*) *Respondent*.

The appeal of the above-named Appellants from the judgment of the Supreme Court of the North-West Territories en banc, pronounced in the above cause on the eighteenth day of January in the year of our Lord one thousand nine hundred and five, affirming the judgment of the Honourable Mr. Justice Scott, one of the Judges of the Supreme Court of the North-West Territories rendered in the said cause on the twenty-fifth day of March in the year of our Lord one thousand nine hundred and four, having come on to be heard before this Court on the twenty-eighth, thirtieth and thirty-first days of October in the year of our Lord one thousand nine hundred and five in the presence of counsel as well for the Appellants as the Respondents, whereupon and upon hearing what was alleged by counsel aforesaid this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment this Court did order and adjudge that the said appeal should be and the same was allowed, and that the judgments of the Supreme Court of the North-West Territories en banc and of the Honourable Mr. Justice Scott one of the Judges of the said Supreme Court of the North-West Territories should be and the same were reversed and set aside, and that the action should be and the same was dismissed.

And this Court did further order and adjudge that the Plaintiffs, Respondents, should and do pay to the Appellants the costs incurred by the said Appellants before the Supreme Court of the North-West Territories en banc and their costs of the action as well as their costs in this Court.

(Signed) E. R. Cameron, Registrar.

Certified a true copy.

RECORD.

No. 76.
Order giving leave to appeal to the Privy Council, 30th June, 1906.

At the Court at Buckingham Palace, the 30th day of June, 1906.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 27th day of June 1906 in the words following, viz. :—

* * * * * * * * *

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that leave be and the same is hereby granted to the Petitioners to enter and prosecute their Appeal against the said Judgment of the Supreme Court of Canada dated the 21st day of February 1906 upon depositing in the Registry of the Privy Council the sum of £300 sterling as security for costs but that the said Petition so far as it prays that all further proceedings herein against the Petitioners at the instance of the Defendants may be stayed be and the same is hereby dismissed. And it is hereby further ordered that the authenticated copy under the seal of the said Supreme Court of the record pleadings proceedings and evidence produced by the Petitioners on the hearing of the said Petition be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before His Majesty on the hearing of this Appeal.

Whereof the Governor-General Lieutenant-Governor or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

(Signed) A. W. FITZROY.

With Notes.

In the Privy Council.

No. 45 of 1906.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE REVEREND IWAN ZACKLYNSKI, PAVLO PASEMKO and PETRO MELNYK, Trustees of the Congregation of the Greek Catholic Church at Star, Alberta, N.W.T., and also as Individuals, as Priest and Members of the said Congregation suing on behalf of themselves and all other members and adherents of the said Congregation (amended by leave granted March 11th, 1902) . (*Plaintiffs*) *Appellants*,

AND

MICHAILO POLUSHIE, IWAN PYLYPIW and MICHAILO MELNYK . . (*Defendants*) *Respondents*.

CASE FOR RESPONDENTS.

1. This is an Appeal from a judgment of the Supreme Court of Canada dated the 20th day of February 1906 in favour of the Respondents, reversing the judgment of the Supreme Court of the North West Territories en banc dated the 18th day of January 1905, which affirmed the judgment of the Trial Judge, the Hon. Mr. Justice Scott dated the 25th day of March 1904 in favour of the Appellants. Record, p. 249. p. 183, ll. 1-10. p. 177, l. 30 *et seq.*

2. The subject matter of the action is 40 acres of land and the Church erected thereon. The land is Legal sub-division 1 of Section 27 in Township 56 in Range 19 West of the Fourth Meridian Alberta, and the district is variously called Star, Edna or Limestone Lake. p. 180, l. 10. p. 162, l. 22.

3. The parties to the action are known as "Little Russians." They came to Canada from Galicia, Austria, and began to settle near Star, Alberta, some fifty miles from Edmonton, in 1892, taking the free homesteads offered by the p. 199, l. 5

In Galicia church lands are invariably vested in the Archbishop

p. 11, l. 7.
p. 46, l. 22.

Record,
p. 29, l. 26.
p. 47, l. 21.
p. 47, l. 30.
p. 176, l. 19.

Dominion Government. They are illiterate, few being able to read or write, but they are zealously attached to the religious observances, rites and ceremonies of the Greek Church of their forefathers.

p. 162, l. 22.

4. The land in question was given by the Dominion Government as a free grant, and the Certificate of Title dated 6th July 1899 shows the land to be vested in the Respondents "in trust for the purposes of the congregation of the Greek Catholic Church at Limestone Lake." Prior to the said grant two of the Respondents Michailo Polushie, Michailo Melnyk and a friend Fedor Melnyk all acting on behalf of their fellow settlers made a requisition dated November 29th 1897 to the Dominion Government Land Agent at Edmonton for permission to cut logs upon Crown lands, stating in their requisition, that the "timber is required and will be used in the erection of a Church building for the Mission of the Greek Orthodox Church, and for no other purpose." The requisition was granted, the logs were cut and carted and the Church was built by the voluntary labour and contributions of the Respondents and other settlers.

pp. 169-170.
p. 170, l. 1.
p. 172, l. 47.
p. 98, l. 8.

p. 86, l. 38.
p. 78, l. 13.
p. 41, l. 35.
p. 132, l. 1
p. 112, ll. 20, 34-43
p. 131, l. 12 et seq.
p. 163, l. 13-35.
p. 150, l. 8.

p. 27, l. 23.
p. 130, l. 46 et seq

p. 2, l. 34.
p. 40, l. 43 et seq.

5. Although at the time of the commencement of this action the Appellants claimed to have been appointed the Trustees of the Church in succession to the Respondents such claim was expressly abandoned by their counsel at the trial and the only question involved in this appeal is in substance whether the Respondents are entitled as Trustees of the Church and land to hold the same, as they contend, for the purposes of a Greek Orthodox Church or of a Church independent of the authority or control of the Roman Catholic Church and hierarchy or whether, as the Appellants contend, the Church and land are appropriated to the purposes of a Church united with and subject to the jurisdiction of the Pope and the authorities of the Roman Catholic Church in Alberta.

p. 181, l. 17.

p. 171, l. 7.
p. 199, l. 17.

6. The Church to which the Appellants and Respondents and most of the other settlers at Star belonged while in Galicia is variously designated as the Uniate, United Greek Catholic or United Greek Ruthenian and also, but as the Respondents contend incorrectly, the Greek Catholic Church. Upon the conquest of the country by the Poles in 1595 the Greek Orthodox Church there was constrained to acknowledge the supremacy of the Pope but was allowed to retain its ritual in the Slavonic language and certain other privileges. The Appellants contend that the Congregation of the Church in dispute and its property are subject to the jurisdiction and control of the Roman Catholic Bishop of the Diocese (St. Albert) within which the members of the Congregation live.

p. 10, l. 4
p. 11, l. 46
p. 16 l. 26
p. 19, l. 20
p. 39, l. 34
p. 45, l. 32
p. 46, l. 33
p. 47, l. 4
p. 49, l. 26
p. 148, l. 29
p. 149, ll. 16, 29 + 38

p. 13, l. 18.
p. 47, l. 24.
p. 200, ll. 1-33.
p. 235, l. 11.

p. 47, l. 8.
p. 55, l. 10, to p. 56, l. 6.

7. The Respondents contend that while in Galicia, so far as they and their priests and co-religionists acknowledged the authority of the Pope they were constrained so to do by the law in force in Galicia, which entirely proscribes the Greek Orthodox Church, but that they always described their Church as the Russian Church, and often used Russian books and made pilgrimages to Churches in Russia, and that on finding themselves at liberty to do so, the original founders of the Church at Star (among whom were the Respondents) intended to throw off their subjection to the Pope.

p. 10, l. 17 et seq
p. 13, ll. 20+41
p. 47, l. 10
p. 79, l. 31
p. 80, l. 33
p. 100, l. 12

p. 80, l. 5.
p. 89, l. 35.
p. 94, l. 41.
p. 99, l. 1.
p. 109, l. 36.
p. 111, ll. 10-40
p. 92, l. 14.
p. 116, l. 1.
p. 237, l. 1.

p. 14, l. 6.
p. 43, l. 33.
p. 45, l. 26.
p. 50, l. 36
p. 55, l. 8.
p. 108, l. 15.
p. 119, l. 17.
p. 122, l. 16.
p. 123, l. 5
p. 136, l. 47.

p. 92, l. 39.
p. 109, l. 36
p. 136, l. 27

p. 55, ll. 20-32
p. 94, l. 6.

p. 82, l. 21.
p. 86, l. 13.
p. 98, l. 46 et seq
p. 120, ll. 4 + 18
p. 123, l. 8
p. 126, l. 18.
p. 129, l. 30
p. 137, ll. 10-28
p. 139, l. 39.

and see
p. 41, l. 20
p. 58, l. 14

8. The circumstances attending the foundation of the Church in question in this action were as follows:—

In the winter of 1896–7 the Respondents and other Galician settlers took steps to hold religious services.

Of their own accord before any priest had come to the Settlement they determined to build a Greek Orthodox Church.

A written application was made on their behalf to the Greek or Russian Orthodox Bishop of North America at San Francisco for a priest. This letter is not in evidence but its purport appears from the replies received.

9. In his Lordship's letter of January 8/20, 1897, he says (paragraph II): "Replying to your letter we are thankful to God that though you are in a foreign "country you remember that you are Russians and have the faith (given) by "God. I would fain include you all in this blessed faith, from which Popes and "Jesuits seek to separate you by force and falsehood." And a further letter of February 5th 1897, the Bishop says (paragraph II): "Replying to yours I have "much satisfaction in your return to your grandfathers' religion 'pravoslavny' "(i.e. Russian Orthodox). God will bless your good intention."

10. These replies were read and approved at meetings attended by the Respondents and the Galicians generally of the two adjoining settlements of Wostock and Star. The question of building a Greek Orthodox Church was discussed. Two Churches were eventually built, one admittedly Greek Orthodox at Wostock, six miles from Star, and the other, the Church in question, in order to suit the convenience of the Star congregation, at Star.

11. The Greek Orthodox Bishop sent Father Kamneff, a Greek Catholic Orthodox Priest and Father Alexandroff then a Greek Catholic Orthodox Missionary to visit the Settlement in June 1897. They were well received and held services at which all the Galicians were present, except those who were absent from the Settlement or ill. Spaczinski, one of the Appellants' witnesses was present and acted as precentor. All present renounced the Pope, and a large number were enrolled as Members of the Greek Orthodox Church.

12. The Congregation enquired what steps they should take to secure a Church and the services of a Priest. Fathers Kamneff and Alexandroff informed them that they should apply to the Government for a free grant of land and a free permit to cut logs for the church building proposed to be erected.

13. Steps were forthwith taken by the Respondents and others to secure the logs and the land. In or about June 1897 an application for the land now in question was made to the Dominion Government through the local Member of Parliament.

Record,
p. 171, l. 45.
p. 77, ll. 1-20.
p. 97, l. 29.
p. 100, l. 37.
p. 122, l. 32.
p. 86, l. 35.
p. 101, l. 15 & l. 29.
p. 115, l. 17
p. 123, l. 6
p. 172, l. 1.

p. 166, l. 20.

p. 167, l. 20.

p. 115, l. 22. et seq
p. 116, l. 18.
p. 117, l. 38.
p. 123, l. 27.
p. 124, l. 33.
p. 125, l. 27.

p. 91, l. 30 et seq.
p. 116, l. 36
p. 117, ll. 1-21.
p. 126, ll. 5 & 18
see p. 152, ll. 13 & 2
p. 85, l. 41.
p. 101, ll. 16-32.
p. 150, l. 7.
p. 28, ll. 22-28.
p. 78, ll. 7-16.
p. 80, ll. 42-47.
p. 81, ll. 1-11.
p. 101, ll. 31-34.
p. 132, ll. 22-24.

Record,

14. In or about the month of September 1897 the Roman Coadjutor Bishop of the Diocese of St. Albert, in which the said land and Church are situate, visited the Settlement and complained of the intention of the Galician settlers to build a Greek Orthodox Church at Star. The Bishop said " What is the matter with you, you don't stay with your own religion ? " meaning thereby the Uniate branch of the Roman Catholic Church. He offered to provide a Church free of cost and to send a priest provided only that the Galician Settlers would furnish the logs for the building of the Church. This offer was not accepted.

15. In the Spring of 1898, the Congregation discovered that the Roman Catholic Bishop of St. Albert at Edmonton had applied on the 26th of January 1898 for and obtained a title in his own name to the said land, without the authority or knowledge of the Congregation or any members thereof. The Congregation held a meeting, at which the Respondents were appointed Trustees and they and other members of the Congregation made three several visits to the residence of the said Bishop of St. Albert at Edmonton to demand that he should give up the land to the Trustees. They refused to permit the Bishop to retain their land and threatened to commence legal proceedings. Subsequently the Bishop relinquished all claim to the land, and on the 25th May 1898, the Agent of the Dominion Lands wrote to the Secretary of the Department of the Interior, Ottawa, in reference to the matter. This letter is in part as follows :—

> " It appears to have been an error asking for a patent in his Lordship's name. This land is not intended to go to the Catholic Church, but to the members of the Greek Catholic Little Russian denomination who are settled in this vicinity.
>
> " The Trustees for these people are Mikel Polischy, John Pilipivisky, and Mikel Melnyk.
>
> " They were very deeply concerned over the fact it was proposed to hand this land over absolutely to the Roman Catholic Church ; they insist on having the entire control in their own hands and, as it is highly desirable to meet their wishes in this connection, I should be glad (if the relinquishment which I herewith enclose is inadequate) if you will be so good as to have an instrument prepared to meet the case."

Accordingly on the 6th of July 1899, a Certificate of Title was issued to the Respondents as above mentioned.

16. The Congregation completed the erection of the Church unaided in the year 1899, and thereafter continued to manage their own affairs without any interference whatever by or attempt to control on the part of the Roman Catholic Bishop.

17. The Appellants appear to rely upon visits made to the congregation by certain priests prior to the building of the Church. A Father Dymytrow paid two short visits to the Congregation, one in April and one in September 1897. On the first occasion he came without the knowledge or authority of the Roman Catholic Bishop of St. Albert (to whom if a Uniate priest he should have reported). It was during his second visit that the Roman Catholic Bishop visited the Settlement at Star and appealed to the Galician settlers to stay with their own religion. Father Dymytrow however appears to have advised the

Dymytrow.

p. 20, ll. 2+15
p. 28, ll. 2+36
p. 79, l. 24
p. 80, ll 33+40
p. 81, ll 16+32
p. 86, l. 13
p. 89, l. 45
p. 90, l. 24
p. 91, l. 22
p. 97, l. 36,
p. 99, ll. 7+20
p. 100, l. 22
p. 108, l. 22.
p. 102, l. 34
p. 109, l. 20
p. 111, l. 11.
p. 132, ll. 8-29.
p. 138, l. 5

Tymkiewicz

p. 24, l. 33.
p. 28, ll. 1,3, 17+33.
p. 41, l. 38
p. 75, l. 35
p. 78, ll. 21-36
p. 81, l. 32
p. 87, l 2
p. 100, l. 22.
p. 102, l. 40.
p. 103, l. 2.
p. 106, l. 36.
p. 22, l. 23.
p. 25, l. 8.
p. 239, l. 17-30

Record,

Congregation against committing themselves in any way to the Roman Catholic Bishop. Similarly in 1898, Father Tymkiewicz spent some four months in the Settlement. He advised the Galician Settlers strongly to accept nothing whatever from the Roman Catholic Bishop. There is evidence that one if not both these priests declared that they were not subject to the Roman Catholic Bishop, and there is no reason to suppose that the original congregation had any doubt on this point or would otherwise have accepted their ministrations.

p. 28, ll. 1-6.
p. 78. ll. 21-36.
p. 81, l. 16.
p. 87, l. 3.
p. 91, l. 23.
p. 99, l. 7.
p. 111, l. 11.
p. 239. l. 20

p.19, l.24.
p.25, ll.22+32
p.29, l.27.
p.31, ll. 4+33
p.32, l.34
p.36, l.1.
p.37, l.7.
p.49, l.32 et seq
p.94, l.45
p.98, l.9.
p.100, l.3
p.113, l.29.
p.134, l.30
p.159, l.29
p.161, ll.10+17

18. In or about the month of April 1900, the Congregation of the Church at Limestone Lake (acting in conjunction with the congregation of the Greek Orthodox Church of Wostock) invited the Appellant Father Zacklynski to the Settlement. In the letter of invitation to Father Zacklynski from members of the congregation, the passage occurs "We are all Uniates near together on "Ranges 20, 19, 18, 17 and 16 in Townships 57, 56, 55, 54 and 53 and are moving "towards the South. There are over 300 families of us." The person however by whom this letter was prepared was not called as a witness and there is a great body of evidence to show that many of those who signed or affixed their marks to the letter were not aware that it contained this passage and that the members of the congregation generally by whatever name they might be called repudiated subjection to the Pope.

p. 103, l. 27
p. 104, ll. 1-46
p. 133, ll. 38-47.
p. 134, ll. 1-6.
p. 154, l. 32
p. 246, l. 12

p.35, l.12.
p.50, l.4.
p.98, l.13 et seq
p.99, l.27.
p.89, l.2
p.83, l.39
p.84, l.35
p.108, l.43
p.107, l.24
p.134, l.42
p.135, l.1.
p.138, l.39. et seq
p.151, l.6.
p.111, l.20

19. Father Zacklynski admits that he told the congregation at the opening service that he had nothing to do with the Roman Catholic Bishop. The Congregation continued to accept his ministrations until he proposed to borrow $300 from the Roman Catholic Bishop with which to finish the Priest's residence, and in consequence of this and other matters a quarrel arose between Father Zacklynski and the Trustees and Congregation. His fidelity to the Greek Orthodox Church was suspected, and the quarrel resulted eventually in the Respondents as Trustees locking the Church against Father Zacklynski. Father Zacklynski states in his evidence that the Provisors appointed by him on the 18th December 1900 refused to take an oath he demanded of them, and that some of them replied, "No, no, that is for the French Bishop, do not swear."

p. 148, l. 32
p. 78, ll. 41-46.
p. 79, ll. 1-6
p. 88, ll. 32-43.
p. 99, ll. 29-31.
p. 90, l. 39.
p. 148, ll. 32-40.
p. 89, l. 14.

p.51, l.33
p.52, l.4
p.58, l.2
p.59, l.15
p.82, ll.17+46
p.85, l.5
p.91, l.8
p.98, l.29

20. On the 27th January 1901, Father Korchinsky, appointed Priest of the Greek Orthodox Church in the adjoining Settlement of Wostock in 1900, was invited to become the Priest of the Congregation at Star by the Respondents the Trustees and other members of the Congregation, and he continued to act as such until the dispute arose as to the title to the Church immediately prior to the commencement of the action. Petro Melnyk one of the Plaintiffs was present, and made no objection to the invitation of Father Korchinsky.

p.107, l.29
p.113, l.30
p.114, l.1.
p.115, l.5
p. 89, ll. 15-18.

21. On or about the 14th February 1901, the Appellant Zacklynski who had given up his charge and left the Settlement, returned and endeavoured to remove the Respondents from their office as Trustees and to procure the appointment of the Appellants instead, and the present action was subsequently brought.

p.26, l.9.
p.30, l.21.
p.33, l.37 et seq
p.82, l.10.
p.114, l.11.

Record, p.178, ll. 4-7.

22. Scott J. the Trial Judge, declared the lands and Church in question to be the property "of that branch of the Greek Church which is united with "the Roman Catholic Church and which may properly be designated as The "United Greek Catholic Church and that they are not the property of the "Russian Orthodox Church."

p. 183, l. 1. p. 180, l. 10.

The Supreme Court of the North West Territories sitting en banc affirmed this decision. The dissenting judgment of Sifton C. J. is based on the view that the original intention of the Congregation as borne out by the documentary evidence was to vest the lands and Church in the Respondents as Trustees for a Greek Orthodox Church, and that "no evidence has been adduced to satisfy "me that the original congregation or any considerable portion thereof have "ever expressed dissatisfaction at the action of their trustees."

p. 249.

The Supreme Court of Canada, the Chief Justice and Girouard J. (dissenting), in reversing the decision of the Supreme Court of the North West Territories, declared in the reasons for its decision that the said lands were intended to be

p. 240, l. 40. p. 248, l. 30.

vested in the Respondents by the Crown for the purposes of the erection of a Greek Orthodox Church thereon and that the said Church and lands were not intended to be for the purposes of a Church united with and subject to the jurisdiction of the Pope of Rome and the authorities of the Roman Catholic Church, and that the said lands and church have from the beginning been held by the defendants in trust for the purposes of a Greek Orthodox Church.

p. 14, ll. 1-5. p. 54, l. 28. p. 56, ll. 42-47. p. 57, ll. 1-12. p. 93, ll. 34-46. p. 94, ll. 1-3. p. 102, ll. 4-7.

23. It is submitted that the name "Greek Catholic" denotes the Eastern or Greek Orthodox Church, variously known as the Greek Church, the Greek Catholic, the Russian Orthodox Church and the Eastern Orthodox Russian Greek Catholic Church.

p. 55, l. 23. p. 98, l. 46 et seq. p. 116, l. 1. p. 108, l. 20. p. 91, l. 22. p. 99, l. 7. p. 100, l. 22. p. 148, l. 32. p. 152, l. 28.

p. 10, l. 2. p. 46, l. 2. p. 47, l. 8. p. 62, l. 9. p. 89, l. 35 p. 91, l. 14 p. 92, l. 8 p. 119, l. 39. p. 120, l. 18.

p. 111, l. 21 p. 129, l. 30 p. 137, l. 10 (See References to para 17)

24. Attachment to the proscribed Orthodox Church and antipathy to the authority of the Pope as the head of the Polish Church still exist among the Galicians. So far as this case is concerned this appears from the clear intention referred to in the evidence of the Settlers not to subject themselves to the authority of the Roman Catholic hierarchy and from the fact that all the priests who ministered to the Congregation took occasion to announce publicly that they were not subject to the Roman Catholic Bishop.

25. The viva voce evidence of the founders' intentions is supported by the written evidence of the Trust:

p. 162, Exhibit K.

(A) The Certificate of Title to the land in question issued to the Respondents where the Congregation is described as Greek Catholic.

p. 169, Exhibit 9.

(B) The requisitions for or permit to cut logs to be used in the erection of a Greek Orthodox Church upon the land in question.

pp. 165-166. Exhibit I.

(C) Exhibit I, Letter of instructions from the Agent of Dominion Lands Education, accompanying the relinquishment so executed by the Roman Catholic Bishop.

The Respondents submit that the judgment of the Supreme Court should be affirmed and the Appeal dismissed for the following among other

REASONS.

1. Because the intention of the founders was that their Church should be a Greek Orthodox Church.

2. Because the intention of the founders was that their Church should not be subject to the authority and control of any Roman Catholic authority.

3. Because the land was granted by the Crown for the purposes of a Greek Orthodox Church. ※

4. Because the Church was built from logs given by the Crown for the purposes of a Greek Orthodox Church.

5. Because the Congregation was and is Greek Orthodox.

6. Because the Congregation intended to be and is independent of the Roman Catholic Church and authorities.

7. Because the reasons contained in the judgments of the majority in the Supreme Court of Canada, and in the judgment of Sifton C. J., in the Territorial Court, are correct.

R. B. FINLAY.
WM. SHORT.
HAMAR GREENWOOD.

※ Greek Catholic means Greek Orthodox

p. 13, l. 4.
p. 14, l. 3.
p. 54, l. 22.
p. 56, l. 42 et seq
p. 60, l. 47.
p. 61, l. 19 et seq
p. 93, l. 34.
p. 94, l. 1.
p. 102, l. 4.
p. 146, l. 36.
p. 155, l. 34.

Contra
p. 9, l. 32.
p. 15, l. 10.
p. 120, l. 13.
p. 170, l. 33 et seq.

In the Privy Council.

No. 45 of 1906.

On Appeal from the Supreme Court of Canada.

BETWEEN

THE REVEREND IWAN ZACKLYNSKI AND OTHERS *Appellants,*

AND

MICHAILO POLUSHIE AND OTHERS *Respondents*

RESPONDENTS' CASE

BLAKE & REDDEN,
17, Victoria Street, S.W.

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In the Privy Council.

No. 45 of 1906.

On Appeal from the Supreme Court of Canada.

BETWEEN

THE REVEREND IWAN ZACK-LYNSKI and Others . . *Appellants,*

AND

MICHAILO POLUSHIE and Others *Respondents.*

RECORD OF PROCEEDINGS.

HARRISON & POWELL,
5, Raymond Buildings,
Gray's Inn,
for Appellants.

BLAKE & REDDEN,
17, Victoria Street, S.W.,
for Respondents.